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ABSTRACT

As its title indicates, this report is a discussion of alternative mechanisms for handling the flow of tuition dollars from students to the public institutions of higher education they attend. It attempts, through creative thinking and expert reaction, to explore some untried administrative techniques that administrators in public institutions may find useful if future events demonstrate that some new method of assessing and collecting tuition is required. The report concentrates on five tuition models: (1) The Nonresident Student Surcharge Model; (2) The Resident Student Fee Remission Model; (3) The Sliding Scale (Multiple Criteria) Model; (4) The Sliding Scale (Single Criteria) Model; and (5) The National Tuition Bank Model. Appendixes include a multiple criterion tuition assessment model; the sliding scale cost recovery formula; residency and university admission problems in the Federal Republic of Germany, a rationale for supporting the admission of nonresident students to public colleges and universities; and nonresident tuition and constitutional law. An extensive bibliography is included. (Author/PG)

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Alternative Tuition Systems

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FOREWORD

The two associations of public colleges and universities which we serve have maintained a strong and constant commitment to the tradition of low or no tuition in public institutions of higher education. Our joint sponsorship of the study reported in this publication is consistent with that commitment.

As its title indicates, this report is a discussion of alternative mechanisms for handling the flow of tuition dollars from students to the public institutions of higher education they attend. It attempts, through creative thinking and expert reaction, to explore some untried administrative techniques which administrators in public institutions may find useful if future events demonstrate that some new method of assessing and collecting tuition is required.

We must admit that, when first approached regarding possible sponsorship of this study, we had mixed feelings. After all, the traditional system of collecting tuition from nonresident students in public colleges and universities has worked reasonably well, in spite of some recent pressures on it. Why then should the two associations consider sponsoring a project that was designed to suggest possible replacements for the system?

There were, of course, a number of ready answers to that query. We do not yet know the full impact on public institutions of recent court decisions and legislative actions regarding residency, age of majority, and voting rights. If the traditional tuition system cannot adjust to the changes, some new system may be needed. Second, we saw the need to investigate ideas that might be possible lines of defense against further erosion of the so-called "low tuition principle" which undergrids all of public higher education in this country. It seemed clearly vital that we learn more about how our institutions might revise their tuition structures, especially in light of the current economic situation and in response to a spate of commission reports that all urged drastic increases in tuition at public institutions. Finally, we shared the conviction that our associations have an obligation to encourage creative inquiry into educational problems, much in the same manner as our member institutions do in other areas of scholarly interest. By sharing whatever insights that surface through such inquiry, we would be more completely serving not only those institutions that constitute our membership but the entire higher education community as well.

The Executive Boards of AASCU and NASULGC, in joint session, saw merit in the proposal, the Ford Foundation agreed to underwrite the study, and The American College Testing Program agreed to publish this final report. Speaking in behalf of the nearly 500 institutions that comprise our two associations, we are pleased to offer this report to the higher education

community. It is presented not as a pedantic answer to serious educational problems but rather as a stimulus to our thinking about such problems. It is a first step towards better understanding and possible action, if action becomes necessary in the years ahead. We know that Bob Carbone is in full agreement with these sentiments since it was in this frame of reference that he conceived of the project and carried it through to completion.

It is our hope that the pages that follow will indeed stimulate your thinking with regard to the financing of higher education in our country. If they do, our aspirations for this project will have been well satisfied.

Allan W. Ostar
Executive Director
American Association of State Colleges
and Universities

Ralph K. Huitt
Executive Director
National Association of State Universities
and Land-Grant Colleges

INTRODUCTION AND ACKNOWLEDGMENTS

The extension of voting rights to younger citizens and lowering of the age of majority in many states, resulting mainly from laws passed prior to the 1972 elections, have given out-of-state students increased opportunity to establish residency where they attend college. The Supreme Court ruling that students must be permitted to satisfy durational requirements while they are enrolled had a similar effect. As a result, many students who migrate across state borders to attend public colleges and universities will pay higher nonresident fees only until they can qualify for reclassification as resident students—normally 1 year, but in many states as little as 6 months.

Given this situation, it is legitimate to ask: Is the traditional administrative arrangement for assessing and collecting tuition adequate to handle these new conditions? If not, are there alternative tuition systems that might be brought to the attention of faculties, administrators, and governing boards of publicly supported institutions of higher education? These two questions motivated the study reported in this publication.

As recent discussions of financing higher education clearly reveal, what one writes about tuition issues is heavily influenced by ideology. It is appropriate, then, to begin by identifying the personal bias that underlies much of what is written here. First, I am convinced that the so-called "low tuition principle" must be preserved if public higher education is to survive as a viable and productive instrument of our society. Second, I believe that colleges and universities must be permitted to continue charging differential tuition for resident and nonresident students in recognition of the basic support of higher education by residents of the state where the institutions are located.

These two factors, plus the desire to seek new mechanisms to handle the flow of tuition dollars from students to institutions, led to the development of five alternative tuition "models." These models, while they may not fully meet the format for scientific modeling used by scholars in other fields, attempt to outline possible variations on the traditional tuition assessment system. It should be clearly understood that they are not put forward here as recommendations for immediate implementation. Rather, these schemes, and the analyses that follow each of them, represent an effort to initiate discussion and thoughtful consideration. It is hoped that the reader will see

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All opinions and ideas expressed in this report are mine and those of the consultants and analysts. In no sense do these pages constitute official policy or position of the American Association of State Colleges and Universities, the National Association of State Universities and Land-Grant Colleges, or The Ford Foundation.

them as ideas worthy of attention and as rough concepts ready for further analysis and refinement.

The Models

Two very obvious (and very ideologically loaded) tuition models—the no-tuition scheme and the full-cost-tuition scheme—are *not* included in this report. Each of the notions in its own way represents a position out of step with current economic conditions and prevailing political reality. Few educators and even fewer taxpayers seriously argue that the state should provide free postsecondary education in its public institutions, although there is considerable interest in making the first 2 years of college virtually free of direct cost to the student. At the other extreme, it is highly unlikely that the taxpayers of any state would endorse a plan that would pass along the full cost of college instruction, even though proponents of this position hold out promises of portable grants and loans as a way of making the idea more palatable. Since an elaboration of these positions would tend to divert attention from more realistic "centrist" positions, they were rejected out of hand. Instead, effort was concentrated on the five models described briefly below.

The Nonresident Student Surcharge Model. Under this scheme, tuition for all students—residents and nonresidents alike—would be at the same low level. At the time of initial matriculation, however, nonresidents would be charged a substantial one-time fee, payable over time, corresponding to the state subsidy that resident students receive. Details of the model are presented in Chapter 1. It is impossible for me to identify the source of this idea, so I must take full responsibility for both the concept and the elaboration of it found in the opening chapter.

The Resident Student Fee Remission Model. The concept of "low tuition" would be replaced by the idea of "low net cost to residents" under this plan. Tuition for all students, residents and nonresidents, would be set at full cost of instruction but graduates of in-state high schools would receive a tuition voucher—in a sense, a scholarship—that would have the effect of reducing direct costs considerably. Obviously, nonresidents who graduated from high schools in other states would pay a much higher tuition since they would not be eligible for the fee remission. The source of the idea is difficult to pinpoint, although it first came to my attention in a conversation with Donald E. Percy of the University of Wisconsin. Again, I take responsibility for its elaboration, which is found in Chapter 2.

The Sliding Scale (Multiple Criteria) Model. This scheme was developed by Don A. Blackerby, facilities officer and research assistant in fiscal affairs, Oklahoma State Regents for Higher Education. My modification of his original paper is found in Chapter 3. It describes how a number of weighted

residency criteria can be used to sort students into nine tuition levels that correspond to varying degrees of resident/nonresident status. Since readers of this report may be interested in the more elaborate model originally developed by Dr. Blackerby, a slightly edited version of it is included as Appendix 3 of this volume.

The Sliding Scale (Single Criterion) Model. To provide a sharp contrast to the multiple criteria model, the scheme reported in Chapter 4 was developed. It is a much simplified version of a model designed by David K. Hanson, assistant chancellor, and Michael A. Liethen, legal assistant to the chancellor, both of the University of Wisconsin-Madison. My modification of their scheme utilizes a single criterion—length of domicile in the state—as a tool for sorting students into five tuition levels. Again, the original model as developed by Hanson and Liethen has been included in this volume (see Appendix IV) since it contains elements that were not retained in my modification.

The National Tuition Bank Model. This scheme, described in Chapter 5, is clearly the most revolutionary of all those presented in this report. It suggests that all states and/or the federal government provide educational subsidies for students who migrate to public institutions in other states, and describes an "exchange bank" which would channel these subsidies directly to those institutions that enroll nonresident students. As much as I would like to take credit for originating the basic concept behind this scheme, I cannot, since it has been discussed in somewhat vague terms by many educators for many years. Of course, I do accept responsibility for this version of a national tuition reciprocity system. In so doing, however, I acknowledge the assistance of Arthur D. Browne, vice president for academic planning and development, University of Arkansas, who prepared a helpful background paper for this portion of the study.

Analysis of the Models

The original proposal for this study outlined as its primary purpose not only the identification of "alternatives to the current system of differential tuition in public colleges and universities" but also an analysis of the "legal, economic, political, and educational implications of these alternative tuition assessment models." This analysis is reported in the second section of each chapter. It was provided by four consultants, each qualified by virtue of training and/or experience to bring special insights to bear on the models. The identification of these four analysts below provides me an opportunity to acknowledge gratefully their substantive contributions to this report. They are:

Carol Van Alstyne, chief economist, American Council on Education. Dr. Van Alstyne is engaged in a series of important studies related to tuition and

the financing of higher education through her work in the newly inaugurated Policy Analysis Service at ACE. She reviewed the models in light of relevant economic concepts and principles.

Joseph F. Kauffman, professor of higher education, University of Wisconsin-Madison. A former college president and university dean of students, Professor Kauffman is currently engaged in teaching and scholarly study of higher education. His comments bring to the models views representative of those held by faculty members and administrators in public colleges and universities.

Frank B. Pesci, member, House of Delegates, State of Maryland. An experienced legislator, Delegate Pesci serves on both the appropriations and the education committees of Maryland's House of Delegates. He is a former junior college faculty member, administrator, and trustee, and he currently teaches higher education courses at The Catholic University of America in Washington, D.C. He was asked to view the models from the point of view of a practicing politician.

Allan D. Vestal, Carver Professor, College of Law, The University of Iowa. As a legal scholar, Professor Vestal has devoted considerable attention to the concept of residency as it applies to educational institutions. His commentary provides an analysis of the five models in light of constitutional principles and relevant legal decisions. Assisting Professor Vestal in the preparation of this commentary was Donna Paulsen, a student in the College of Law.

Supporting Papers

In addition to the five models and accompanying commentary, this report includes five appendixes which provide supporting material and background information.

Appendix 1 is a statement that seeks to provide a "rationale" for welcoming nonresident students to publicly supported colleges and universities in any state. It summarizes traditional reasons for diversifying the student body at such institutions and was included because, search as I did, it was impossible to find such a statement anywhere in the educational literature. In preparing this rationale, I received valuable advice from officers of both the American Association of Collegiate Registrars and Admissions Officers and the National Association of College Admissions Counselors. Also, I want to thank Ernest H. Ern, vice president for student affairs, University of Virginia; Lee Wilcox, director of admissions, University of Wisconsin-Madison; and Wayne Sigler, associate director of admissions and records, University of Maryland-College Park, for their helpful comments.

Appendix 2 is a discussion of legal issues impinging on the problem of resident and nonresident tuition. It was written by David K. Hanson, assistant chancellor, and Michael A. Liethen, legal assistant to the chancellor, University of Wisconsin-Madison. A review of this background information will assist the reader in making a personal analysis of the alternative tuition models reported in this publication.

Appendix 3 is the Blackerby "multiple criteria" assessment model mentioned earlier, and Appendix 4 is the Hanson-Liethen "sliding scale" tuition model also mentioned earlier.

Appendix 5 reports an investigation of student admissions in the Federal Republic of Germany. It is included to provide some comparative information on residency matters, and highlights the dramatic difference in emphasis placed on "place of residence" by the higher education systems of two countries, both of which have state-supported (as opposed to federal) systems of higher education. In this regard, I wish to acknowledge the assistance of my colleague, Paul Bodenman, an expert on German higher education, who teaches educational foundations courses at the University of Maryland. The opportunity to view first hand the higher education scene in Germany was made possible by a grant from the *Deutscher Akademischer Austauschdienst*, and this assistance is gratefully acknowledged.

Many extremely busy members of the higher education community devoted time and attention to this project, and they are deserving of recognition here. In particular I want to thank members of the study Advisory Committee for their guidance and assistance. They are: Christian Arnold, associate director, National Association of State Universities and Land-Grant Colleges; Robert Kroepsch, executive director, Western Interstate Commission for Higher Education; John Mallan, director of governmental relations, American Association of State Colleges and Universities; Robert Melicon, director of research and development, New England Board of Higher Education; Richard Millard, director of higher education services, Education Commission of the States; and E. F. Schietinger, director of research, Southern Regional Education Board.

A special note of appreciation is due The Ford Foundation for its generous support which made the project possible. Earl F. Cheit (currently associate director, Carnegie Council on Policy Studies in Higher Education) was officer in charge of the Foundation's Program of Higher Education and Research at the inception of this study. I am very grateful for his interest and his assistance in obtaining the grant. Thanks also to Peter de Janosi, who subsequently assumed leadership of the Program of Higher Education and Research, for his interest and advice in the final stages of the project.

I am grateful for the support and encouragement received from Ralph K. Huitt and Allan W. Ostar, executive officers of the two sponsoring associations. The emeritus executive officer of NASULGC, Russell I. Thackrey, provided helpful reactions to first drafts of the models. Roy P. Peterson of Southern Illinois University (Edwardsville), an American Council on Education Fellow in Academic Administration during 1973-74, wrote an informative background paper. Maryjane Miskell of ERIC/Higher Education assisted in identifying relevant articles and publications on the topic. Finally, dozens of faculty members, administrators, and association executives offered ideas and suggestions or responded to my inquiries and requests for assistance. To all these people, I express my appreciation.

College Park, Maryland
November 1974

NONRESIDENT STUDENT SURCHARGE MODEL

The central feature of this tuition model is the concept of a "surcharge" assessed to all students who cannot substantiate a claim of legal residence in the state when they enroll in a public college or university. This model is based on the assumption that each institution or system of higher education would establish standard tuition charges for all students—regardless of resident status—differentiated by levels of instruction as the institution or system determines to be appropriate. The surcharge would be a one-time added fee collectable upon initial matriculation to any degree program but assignable only to those students who clearly are legal residents of another state and whose primary purpose for being in the receiving state is to attain a higher education.

In a sense, this model can be seen as a method through which a nonresident student provides his or her own educational subsidy. The state in turn provides the student with an opportunity to earn a degree. It makes a clear distinction between tuition (that is, instructional fees, which under this plan would be the same for all students at a given level of instruction) and subsidy (which for resident students comes from state appropriations but for nonresidents must come from their own resources). The paragraphs below discuss several elements of the nonresident student surcharge model and indicate how the model might be applied to a mythical public college.

Operational Aspects

When a student is initially admitted to a degree program in the institution, a determination of residency is made. All students—undergraduate, graduate, professional; full-time or part-time; new, transfer, or reentering—would be classified as either resident (i.e., eligible for state subsidy) or nonresident (i.e., liable for payment of nonresident student surcharge). The student's "fee card," which would be produced during the registration process, would indicate the appropriate amount of surcharge to be paid.

The nonresident student, or the person(s) upon whom the nonresident student is legally dependent, would sign a note for the amount of the surcharge. The note would establish a schedule of deferred payment, that is, installments to be paid over the normal length of the degree program (e.g., eight semesters for an undergraduate degree program, etc.), with the first payment due 30 days after initial matriculation. The "fee card" would also indicate the standard instructional fees assessed all students, payable upon completion of registration. Execution of the note would not obligate the signer to any interest or carrying charge for the deferred payment, but penalties could be added for late payment of any installment. The document would clearly indicate that no credit or degree would be granted unless full payment of the surcharge is made prior to the end of the semester or the degree program.

Students who complete the degree program in fewer than the normal number of semesters would have the remainder of the surcharge waived. However, a student who requires more than the normal number of semesters to complete the degree would be liable for only the total amount of the surcharge indicated on the initial "fee card." For part-time students, the surcharge would be prorated in installments proportionate to the fraction of a full-time load the student took during any given semester.

If a student withdraws from the degree program at the end of a semester or term, the remaining portion of the surcharge would be waived and the note would be considered satisfied. However, students who withdraw before the completion of any semester would forfeit recovery of any portion of the surcharge unless such withdrawal came reasonably early in that semester, say prior to the third week of classes. Students who withdraw from and reenter a degree program would receive credit for the amount of the surcharge paid under the earlier registration.

Some students, initially classified as nonresidents, who begin a degree program under liability of the surcharge, might find it necessary or desirable to withdraw from the program for a period of 12 months or more. Indeed, some students may do this primarily for the purpose of establishing residency in the state. Regardless of motives, students who do withdraw from a degree program and subsequently meet the criteria established for initial classification as residents would technically be entitled to state subsidy by virtue of their newly acquired resident status. Such students would be allowed to reenter the original degree program as resident students and thus would be eligible for state subsidy. In such cases the note covering nonresident surcharge would be considered satisfied.

Transfer students pose still another special circumstance. The amount of surcharge to be assessed students who transfer from another institution (whether public or private) would be calculated in proportion to the amount

of the degree program yet to be completed. For example, a student who transfers in as a first-semester junior would be liable for half of the total surcharge for an undergraduate degree.

Nonresident students in degree programs at all levels—undergraduate, graduate, or professional—would be required to pay the surcharge. Students who complete one degree under this condition and who then seek entry to a second or an advanced degree program would be reviewed by the residency classification officer just as if they were new students. If they are able to satisfy the simple test of residency described below, they would be classified as resident students and would no longer be liable for the nonresident student surcharge. If, however, they are still dependent upon someone outside the state, if they only reside in the state during the academic year, and if they did not file in-state income tax returns covering all income, they would still be considered nonresidents and would be assessed the surcharge.

The note covering the surcharge would constitute a legal contract between the nonresident student, or the person(s) upon whom the nonresident student is dependent, and the institution. It establishes the fact that the student is not entitled to subsidy by the state in which the institution is located, and it obligates the signer to payment of a fee covering the specific degree program in question. This agreement would preclude any questions of reclassification of the student while that student remains enrolled in that degree program. However, as suggested above, the student who withdraws from a degree program for a lengthy period may be able to change residency classification by meeting the criteria established for initial residency determination.

Low Tuition

A tuition model such as the one described above would lend support to the principle of low tuition in public institutions. For one thing, it is clearly in opposition to the full-cost-of-instruction position since it depends upon the concept of subsidy—either from the state or from the nonresident student. It is consistent with the notion that benefits of a higher education are shared between individual graduates and society, and that thus both the student and society should share educational costs.

In a more subtle manner, the model combats the mentality that argues for higher basic tuition (e.g., "If nonresidents can pay $1,500 or more, why can't most students from this state find the money also?"). Under this plan, all students in a given degree program would pay identical tuition rates. Since tuition is distinguished from subsidy and since tuition is low, the general public would be less likely to intermingle these concepts and consequently less likely to think about tuition in terms of astronomical sums.

Taxpayer Appeal

All too often in recent years, citizens and their legislators have asked, "Why should our taxes go to subsidize the education of students from another state?" The sentiment is sound, if somewhat parochial. There are few good responses to the query. Voicing them often invites an even more conservative reaction.

The tuition model suggested here provides a simple and easily understood answer. Nonresident students would pay their own subsidy through the initial surcharge and, in addition, they would pay instructional fees. This provides recognition that resident taxpayers, by virtue of long-term contribution to the state, have already subsidized higher education. That being the case, these resident citizens and their dependents pay only instructional fees when they attend a public college or university.

Determining Residency

Under existing methods of determining residency for tuition purposes, considerable institutional time and effort is expended in reviewing student claims for residency, reclassifying students, and hearing appeals from students who seek reclassification. Often these matters involve legal action that consumes time and resources of students and of campus and state legal authorities who become involved.

An important feature of the nonresident student surcharge model is the fact that it eliminates need for all such activities. The classification of a student upon initial matriculation in a given degree program would determine whether or not that student must pay the one-time surcharge. Signing the deferred payment note commits that student to payment of subsidy for the entire degree program; thus no reclassification machinery would be needed.

The work of campus residency classification officers would be further simplified under this model since initial determination of residency is more likely to be uncomplicated by mitigating circumstances. Thus, a relatively simple set of classification criteria would be utilized to make the initial determination. The following would suffice:

Dependent student—If the person(s) upon whom the student is dependent has not maintained legal residency within the state for 12 consecutive months immediately prior to initial matriculation in the degree program, the student must pay the nonresident student surcharge.

Independent student—If the student is a financially independent adult or emancipated minor who has not maintained legal residency within the state

for 12 consecutive months immediately prior to initial matriculation in the degree program, the student must pay the nonresident student surcharge.

For these purposes, legal residence within the state could be defined simply as—

1. being physically present in the state for the durational period, except for short periods of temporary absence;

2. establishing a domicile in the state which is the person's true and permanent place of habitation, in which the person intends to remain, and to which the person intends to return following temporary absence;

3. filing income tax returns which show an in-state permanent address and which report in-state tax liability for all income earned during the previous year.

Exclusive use of this simple and basic definition would make unnecessary reliance on other, more discretionary, artifacts of citizenship such as registering to vote, obtaining an in-state driver's license, purchasing automobile tags and registration, etc. After all, citizens are not *required* to register and to vote, and thus there should be no advantage or penalty for the exercise of discretion in this regard. Not everyone owns a car or knows how to drive, and those who do should not enjoy the advantage of having that fact favorably affect their tuition classification at a public college or university. If ownership of real property is to be considered, the wealthy would seem to have an advantage over the poor who are less likely to be able to own such property. Even if rental of a place of abode is a criterion, some students—those who live rent-free at the home of a friend or relative, for example—are placed at a disadvantage. Therefore, only the rather easily determined conditions of dependence-independence and length of legal residence in the state would be utilized in residency determination.

Budgetary Considerations

To illustrate how the nonresident student surcharge model would influence a college or university budget, the following hypothetical example is offered. Assume that the institution is a general purpose state college enrolling 10,000 full-time equivalent students. It is predominantly an undergraduate institution with a modest graduate program and one small professional school. The budget officer has developed a technique for calculating instructional costs by levels of instruction which reveals the following situation:

Level	Enrollment	Instructional Costs
Lower Division	5,000 students	$1,200 per FTE student
Upper Division	3,500 students	$1,500 per FTE student
Graduate	1,300 students	$1,800 per FTE student
Professional	200 students	$2,500 per FTE student

To support instruction at the levels and enrollments indicated here, the total budget for instruction, exclusive of capital costs, would be $14,100,000 (rounded slightly) per year. The total college budget for a given year is as follows:

Income		Allocations	
Tuition and fees	$ 6,360,000	Instruction (including libraries and departmental research)	$14,100,000
State appropriations	13,300,000	Administration (including fringe benefits and general expense)	2,100,000
Federal funds	140,000	Physical plant (including general maintenance)	1,800,000
Overhead on grants	135,000	Student services (including financial aid)	1,400,000
Gifts and endowments	22,000	Public service and extension programs	500,000
Other sources	43,000	Other	100,000
Total	$20,000,000	Total	$20,000,000

To balance this budget the institution would need to recover $6,360,000 in tuition. If *all* students at a given level—regardless of residency status—paid the same tuition, the college might establish the following tuition rates:

Lower Division	-	$ 500
Upper Division	-	$ 700
Graduate	-	$ 900
Professional	-	$1,200

The income yield under these circumstances would be:

Level	Enrollment	FTE Costs	Tuition	% of Costs	Income
Lower Division	5,000	$1,200	$500	42%	$2,500,000
Upper Division	3,500	$1,500	$700	47%	$2,450,000
Graduate	1,300	$1,800	$900	50%	$1,170,000
Professional	200	$2,500	$1,200	45%	$ 240,000
Total Income					$6,360,000

Assume, however, that the college enrollment for a given year includes the following proportion of nonresident students. Undergraduate-15 percent; Graduate-20 percent; and Professional-30 percent. Assume also that the colleges arbitrarily established the following nonresident student surcharge: Undergraduate-$1,000; Graduate-$1,200 and Professional-$1,500. Under these conditions, the college could establish much lower tuition rates for all students and still recover the needed income. The situation would be as follows:

Lower Division		
5,000 students X $350 tuition	$1,750,000	
750 nonresidents X $1,000 surcharge	750,000	
		$2,500,000
Upper Division		
3,500 students X $550 tuition	$1,925,000	
525 nonresidents X $1,000 surcharge	525,000	
		$2,450,000
Graduate		
1,300 students X $660 tuition	$ 858,000	
260 nonresidents X $1,200 surcharge	312,000	
		$1,170,000
Professional		
200 students X $750 tuition	$ 150,000	
60 nonresidents X $1,500 surcharge	90,000	
		$ 240,000
Total Income		$6,360,000

Under these circumstances the direct costs to students would be as follows:

Lower Division	- Resident	$ 350
	- Nonresident	$1,350 (tuition plus surcharge)
Upper Division	- Resident	$ 550
	- Nonresident	$1,550 (tuition plus surcharge)
Graduate	- Resident	$ 660
	- Nonresident	$1,860 (tuition plus surcharge)
Professional	- Resident	$ 750
	- Nonresident	$2,250 (tuition plus surcharge)

Because of the nonresident student surcharge, tuition at all levels would reflect a lower percentage of instructional costs: Lower Division–29 percent; Upper Division–36 percent; Graduate–36 percent; Professional–30 percent. This level of instructional fee is more in line with traditional tuition rates charged by public colleges and universities. Of course, since the surcharge for each instructional level was determined arbitrarily, it could be adjusted up or down to reflect any level of direct costs the institution desired to pass along to students.

An alternative method of determining the amount of surcharge would be to divide the total state appropriation assigned for instruction at each level by the number of resident students enrolled at that level. The nonresident student surcharge could then be set at an amount equal to the per student appropriation for resident students. (This technique is explained more fully in the discussion of the National Tuition Bank Model in Chapter 5.) Regardless of the surcharge level selected, it is clear that the educational subsidies derived from a surcharge to nonresident students give this model two characteristics seen as desirable in the alternative tuition systems developed in this study. First, the model maintains a sizable differential in direct out-of-pocket costs paid by nonresidents as opposed to those paid by resident students, because students unable to substantiate a claim to residence upon initial matriculation would not receive subsidies from the state. Second, and of more importance, direct instructional fees—that is, tuition—would remain relatively low for all students.

COMMENTARY

(Editor's note: As an introduction to her comments on each of the models, Carol Van Alstyne prepared some cogent and helpful remarks relevant to all the models. They are presented here and are followed by her analysis of the Nonresident Surcharge Model.)

General Comments about the Models—Dr. Van Alstyne

The five tuition models presented were, I believe, synthesized from a much larger array of possible models. In responding to the questions posed about these models, it was helpful for me to begin by trying to understand the essential elements of any differential tuition model. It appears that a differential tuition model would include each of the following essential elements:

1. *Basis for determining payment status* (Note that the term "payment status" is used to replace the conventional term "residency status" because of the contention advanced in the following pages that the legal determination of residency at a point in time, or over a short period of time, is an imperfect proxy in deriving equitable in-state vs. out-of-state tuition differentials at state institutions.)

   a. The *point* in time at which the determination of payment status is made (e.g., at graduation from high school or on matriculation in college)

   b. The *period* considered relevant in the determination of payment status (e.g., the 12 months prior to matriculation)

   c. The *criteria* deemed relevant in the determination of payment status (e.g., legal determinations of residency, declared intention to reside in the state in the future, payment of state income taxes, etc.)

   d. Whether the determination of payment status is one time (e.g., at initial registration) or periodic (e.g., annually at each fall registration, etc.)

   e. Who makes the determination of payment status (e.g., the institution, the courts, or the legislature) and whether or not it is reviewable

2. *Basis for pricing education according to payment status*

   a. Rationale for establishing base tuition levels

   b. Rationale for establishing surcharges or remissions

3. *Payment mechanisms*

   a. Time of assessment of fees (e.g., one-time or periodic)

   b. Period of payment of fees (e.g., lump-sum deferred [payable over time, with or without interest] or periodic)

   c. Who makes payments to whom (e.g., student to institution [surcharge model]; student to state [surcharge model]; institution to student [fee remission model]; state to state [national tuition bank model])

The five models presented are actually combinations of separable elements required to specify a model. Each, although different in total impact, is not necessarily different along all of its dimensions, because some may be shared with other models. The matrix on pp. 11-12 is an attempt to categorize the essential elements of each model for the purpose of helping to compare and contrast their economic effects.

Determining payment status. Conventionally, payment status at publicly supported state institutions is established according to in-state or out-of-state residence. The need to determine residency for tuition purposes derives from a desire by states to charge to in-state students tuition of less than the full cost of education in order to encourage broad access. This is combined with a desire to limit, as a matter of equity to in-state taxpayers, the resulting educational subsidies to nonresidents. If state institutions charged tuition equal to full cost, the beneficiaries of these educational opportunities would be paying the state for them and no question of out-of-state residency would arise with respect to appropriate charges. (The question would still arise in determining priorities for limited numbers of educational slots, however, where applications for enrollment exceeded available slots.)

The equitable determination of residency status has become increasingly important as the in-state vs. out-of-state tuition differential has widened. The process has become exceedingly cumbersome as attempts are made to group students fairly into dichotomous categories labeled simply in-state or out-of-state, when the reality covers a complex range of actual circumstances. Several of the tuition models presented propose to reform the current system for determining residency by moving in the direction of simplifying the procedure. Such proposals include limiting the considerations to be taken into account and limiting or precluding the possibility of reclassification of residency status after changed circumstances might render the first determination inappropriate.

These proposals are offered with the objective of minimizing administrative burdens in making residency determinations. I would argue that these

MATRIX OF ALTERNATIVE TUITION MODELS

Model	Components of Tuition Plan		
	Basis for Determining Payment Status	*Basis for Pricing Education to the Students*	*Payment Mechanism*
A Nonresident Student Surcharge Model	One-time determination with no reclassification possible, on the basis of legal residency in the state for 12 consecutive months immediately prior to initial matriculation.	Standard tuition charges for all students (differentiated by levels of instruction) plus a surcharge assessed to all students who cannot substantiate a claim of legal residence in the state when they enroll in a public college.	One-time added fee collectable upon initial matriculation, with the alternative of signing a note for the amount of the surcharge, which note would establish a schedule of deferred payment (over the normal length of the degree program).
B Resident Student Fee Remission Model	One-time determination with no reclassification possible, on the basis of the students' status at the time of graduation from high school.	Single tuition rate for all students at a given level of instruction, with a substantial (e.g., up to 75%) remission of fees to those resident students who are graduates of an in-state high school.	[Remission of payments by institution to student at the time of payment of fees?]

[*Continued*]

MATRIX OF ALTERNATIVE TUITION MODELS [*Continued*]

Model	Components of Tuition Plan		
	Basis for Determining Payment Status	*Basis for Pricing Education to the Students*	*Payment Mechanism*
C Sliding Scale (Multiple Criteria Model)	Periodic determination on the basis of a flexible scheme of weighted criteria.	Sliding scale of tuition related to the residency scores.	
D Sliding Scale (Single Criterion Model)	Periodic determination on the basis of the length of time the student has resided in the state.	Sliding scale of tuition categories related to the residency scores.	
E National Tuition Bank Model	Initial determination on entry to state institutions on the basis of legal residency 12 months prior to matriculation, with subsequent reclassification possible.	Nonresident fee based on the difference between resident tuition and average per student state appropriations.	National Tuition Bank, a quasi-public corporation which administers a "balance of tuition payments" mechanism for states through which states could channel cost-of-education subsidies to public institutions in other states.

proposals strike an improper balance between concerns about these administrative burdens and the need for fair and equitable treatment of students.

There is a basic difficulty, I believe, in the conventional determination of *residency which none of the plans presented ultimately reaches. The* determination of residency is generally made in reference to a point in time or a short period of time, essentially on legal grounds which do not necessarily correspond directly with the variables relevant in making a fair decision from an economic point of view.

Assessing tuition charges equitably from an economic standpoint should take into consideration the transfers of educational resources over much longer periods of time. The financing of public education involves an intergenerational transfer of resources. The parental generation over a period of time pays taxes, a part of which is invested in creating educational opportunities for their children. The students, on matriculation, take advantage of the benefits, and then later repay the cost of them by means of the taxes on their subsequent earnings, which are used to create educational opportunities for yet another generation. The intergenerational transfer of resources spans 20 to 50 years or more. Fairness in a determination of who benefits and who should pay then depends on some reference to the actual span of the economic transfers. A determination of legal residency status at a point in time may be an entirely inappropriate and inequitable proxy for measuring and assessing charges on the basis of the real transfers of resources.

Thus, the direction of suggested reform of the determination of residency embodied in four of these alternative tuition plans is, I believe, the direction opposite to the one in which reforms should be made. Longer rather than shorter periods of time ought to be taken into consideration in making the determination of fairness in assessing tuition charges differentiated by status of students. Alternatively, the multiple criterion model is an ingenious approach which provides a framework for making much more sensitive determinations of payment status. The criteria used in the framework are essentially legal, however, and ought to be reconsidered in an attempt to introduce factors which relate more directly to the transfer of economic resources– for instance, the length of time the parents have paid taxes in the state. I would argue that the *determination of "residency"* ought to be changed into a *determination of "payment status"* with a concommitant transformation of the conceptual framework used in deriving an equitable assessment of charges based on status.

Pricing education according to payment status. The taxpayers in a particular state may deem that they wish to provide educational

opportunities only to those who (or whose parents) have paid or will pay for them, while providing no state benefits to out-of-state residents. This involves a two-part decision, a decision to impose a surcharge and subsequently a decision about the level of that surcharge. A reasonable point of reference for discussing the surcharge is the dollar difference between the tuition paid by an in-state student and the amount of state subsidy per student. The surcharge could be set at an amount less than, equal to, or more than that difference. Particular decisions would be designed to meet different revenue and student response objectives.

On straight equity grounds the surcharge might be set at an amount necessary to offset any state subsidy, taking into consideration no other net benefits or costs to the state residents resulting from the presence of the out-of-state student. However, given changing enrollment trends in relation to educational capacity, states might wish on other grounds actively to encourage or discourage matriculation of out-of-state students. Separating the price and the equity questions permits separating basic decisions about the level of public commitment to higher education from marginal decisions in relation to changes in shorter-term financial, enrollment, or other conditions—which marginal decisions need not disrupt the basic decisions.

Individual vs. state contributions. One of the questions posed regarding the models was whether or not they suggest a realistic balance between individual state contributions toward the cost of education. In responding to this question, I would argue that "realistic balance" involves the issues of (1) how to *price* education to all students (that is, establishing the level of charges which [at a point in time] split the total cost of education between current payment by students and current subsidy by taxpayers, which should be treated separately after having made the basic pricing decision); and (2) how to achieve *equity* among in-state and out-of-state students and taxpayers.

Both of these subquestions, (1) pricing of education and (2) equity among groups of individuals, involve assessing charges which have implications on the one hand for generating revenues and on the other for inducing behavioral responses by students (which in turn can impact on revenues). But in order to assure both continuity of financial support for higher education and flexibility to respond to changing circumstances, these subquestions should be dealt with separately.

In comparing the alternative models, the standard of fairness is, I believe, not absolute, but relative. How are the people in different circumstances treated compared to each other—whatever the level of basic charges to students? The groups who should be treated fairly with respect to each other are in-state taxpayers, in-state students, out-of-state taxpayers, and out-of-state students.

National approach to a national problem? The tuition models are presented in the general context of seeking a national approach to a national problem. It may be relevant to consider that our system of financing higher education is not national, characterized more or less by a single pattern, but is truly federal, with some 50 different patterns.

Existing evidence indicates that the level of tuition in relation to educational cost varies across the state systems from under 10 percent to over 30 percent. The in-state vs. out-of-state tuition differentials vary from zero to several hundreds of dollars, representing small vs. large proportions of the in-state tuition levels for full-time undergraduate students. Overlaying state enrollment patterns range from a 40-60 public/private enrollment split to a 99-1 split. Some states have large net out-migration in contrast to others which have large in-migration. These sharp differences lead to questions about whether a single model will operate in all circumstances. At the very least, generalizations about the impacts of the tuition models may need to be qualified, state by state.

Additional questions that might be posed. At least two other issues could have been raised in comparing the models. First, are there any differences in the effects of implementing the models on low, middle, and upper income students? Second, what are the comparative impacts of the models on the award of student financial assistance? With regard to the last question, if the award of assistance is based on need, and need is a function of cost of education minus expected family contribution, then a tuition surcharge, for instance, is partly offset by determination of greater need for which federal assistance is available. Thus, the marginal effect of this model is to switch the support of higher education from state to private and federal sources.

Economic Analysis—Dr. Van Alstyne

In responding to the questions posed about the effects of this surcharge model as well as the other four models, it would be helpful to have a frame of reference: The effects of this model as compared to what other model? For this purpose, it may be helpful to use as the frame of reference a synthesis of existing tuition assessment arrangements.

Question: Does the model suggest a realistic balance between individual and state contributions toward the cost of education?

The balance between individual and state contributions is not established by the model but rather by specific decisions required in its implementation. However, the model does offer the best framework for developing a rationale for establishing this balance precisely because the questions of pricing of education and equitable treatment of different groups are handled separately and independently. Rather than suggesting a rationale

for setting any particular level of tuition, the model focuses, given a level of tuition, on the differential treatment of students by status. Conceptually, the student charges in this model are: (1) tuition charges which set a level of current payment for all students irrespective of any consideration of payment status and (2) separate surcharges to students who cannot establish claims for educational benefits provided by state appropriations.

Since the model makes a clear distinction between tuition and subsidy, the rationale for determining the surcharge is entirely separate from the rationale for determining the tuition level. The tuition rationale can be developed in terms of such considerations as social and private benefits, ability to pay, equity, the reasonableness of spreading the cost of education over time since the benefits flow over time, and the place of higher education among state budget priorities. The rationale for setting the surcharge can be developed in terms of such considerations as equity, revenue, and student response. While many of the elements of each rationale would be exactly parallel, the relative emphasis may be quite different.

Question: What is the effect of the model on long-range support for public institutions?

To the extent that taxpayers believe that they are being treated fairly, and that nobody is getting a free ride, long-range support for public institutions should be enhanced.

Question: What effect will the model have on institutional budgets, especially with regard to initial implementation?

Since this model does not differ greatly with existing treatment of out-of-state students, there would be no substantial effect on institutional budgets. Of course, if the surcharge could not be imposed, the effect on institutional budgets would be substantial.

Question: Will implementation of this model in public institutions in a state have any effect on enrollments in all types of institutions?

It would have no effect on the number of resident students who attend public colleges in their home state because their tuition would not change. However, the high surcharge would discourage nonresidents from migrating to that state to enter a public college and thus tend to decrease out-of-state enrollment. Enrollments in private colleges would increase since some in-state students would choose to enter them rather than pay a high surcharge in another state. Also, some migrating students would select a private college over a public college since the cost of attending a public college that imposed the surcharge would be nearly that charged by private

colleges. There would be no effect on enrollments of either resident or migrating students at proprietary institutions.

Question: What influence might the model have on interstate migration of students to public institutions?

The surcharge, assessed one time (even though deferrable and at no interest), would appear staggering to potential migrants. A typical surcharge might be $400 per semester (a total of $3,200 for eight semesters) and this could easily arrest any intention of going out of state to attend college.

Question: In what ways will the model influence current proposals for funding higher education (Carnegie, CED, etc.)?

The concern overall about differential tuition would be reduced to the extent that the model might shift more of the educational costs to the students and their families and reduce the level of public subsidy. However, the issue of fairness in charging differential tuition remains in some form as long as there is current state subsidy of students, and none of the proposals for funding suggests eliminating state support. The major effects of any proposal to go to a market system with vouchers would depend on the features of the voucher plan as well. Presumably the equity arguments have been pressed only with respect to public support for in-state students. Apparently, it is deemed that private voluntary contributors do not, or at least have not, restricted the intended beneficiaries of their contributions to in-state students.

Question: How realistic is the model in light of historic trends and future projections for the funding of higher education?

The model may be characterized as realistic except for the feature of the one-time assessment of a surcharge. It is not obvious, however, that it will constitute an improvement over existing arrangements.

Question: Does the model contribute to the equity and/or efficiency of distribution of educational subsidies in public higher education?

Again, the question needs a frame of reference: As compared to what? From whose point of view? From the point of view of the nation, interstate migration of students probably ought to be encouraged in order to stimulate crossfertilization of ideas, to strengthen national cohesion, and to enhance the advantages of specialization available to those who can benefit from them regardless of their place of origin.

A tuition surcharge may contribute to equitable treatment as between in-state taxpayers and out-of-state students. Yet, the out-of-state students are

foregoing educational opportunities to which they may be entitled in the state of origin, by reason of parental payments of taxes for them there. Furthermore, it is likely that students who migrate out of state are from families with higher incomes. Thus, the surcharge may at one and the same time be designed to create greater equity as between in-state taxpayers and out-of-state students and yet introduce a wider gap nationally in the educational opportunities available to low income students who would be even less able to travel out of state.

Educational Analysis—Professor Kauffman

The alleged advantages of the surcharge model over present practices are not obvious to me. The model appears merely to substitute the term "subsidy" for the conventional term "nonresident tuition." Implicit in the proposal is the assumption that use of the term "subsidy," meaning the amount nonresident students must pay as a surcharge, will have a psychological effect on the legislature. This effect will support retention of a low tuition policy for residents and will obviate any concern about the number of nonresident students admitted. A second assumption is that by requiring the nonresident student, or his or her parents, to sign a note for the amount of the surcharge at time of initial matriculation, requests for reclassification to resident status at a subsequent time will be prevented or inhibited.

With respect to the first assumption, it is quite common now for nonresident tuition to be set at full cost. It is my own view that by emphasizing and highlighting the amount or significance of the state subsidy to resident students, the model creates the dangerous possibility of reducing that subsidy or placing it on a "need" basis for residents. I see no particular advantage, psychologically, in altering the terms. In fact, I see disadvantages in introducing the concept of subsidy for resident students.

The surcharge idea has overtones which would tend to inhibit nonresident enrollment, at least at the undergraduate level. Given the data on student mobility and attrition, what seems like a 4-year contract or note would bother some people. Any drop in nonresident enrollment would result in a significant loss of income that would have to be made up by tuition adjustments or appropriations. Thus, one effect of the fixed 4-year subsidy charge would be to cause more pressure on tuition charges. While I think this could be overcome, it might cause some resistance internally.

On the other hand, the proposal has some elements of the "guaranteed tuition" plans now in use at some institutions. The note covering the surcharge does guarantee to the nonresident that this charge will be fixed throughout the entire degree program and that does add an attractive dimension to the scheme. However, most colleges which have tried such an

approach have not been happy with it because of inflation and the several different tuition levels that are in effect at any one time. Yet, it can be done—although the business office will not like it.

The second assumption mentioned above raises a serious legal issue. On the face of it, it appears that if fees are based on an annual or semester rate for some students, it would be difficult to hold that for others (namely, nonresidents) a 4-year fee or subsidy could be charged. I am certain that this notion would be tested in the courts very quickly. According to the plan, signing a contract covering the surcharge "would preclude any question of reclassification of the student while that student remains enrolled in that degree program." This, in fact, creates an irrebuttable presumption of nonresidence and I do not see how the contract would prevent a student from seeking reclassification. In my view this makes the plan coercive and unnecessarily so. It implies that an irrebuttable presumption of nonresidency can be upheld even though the courts have held that any citizen, including students, must have the right to have a request for a change in residency status considered on the basis of objective guidelines or requirements. Requiring persons to sign a surcharge note puts them in a position of admitting, in advance, that they will not have sufficient grounds to do so. If you want to reduce the number of out-of-state students, this would be a good way to do it.

As for administration of the plan, it would be cumbersome. Both budget requests and the setting of tuition levels for all students would seem to depend on the number of students enrolled each semester. Also, I do not see how the plan would reduce the work of residency classification officers. It might increase it. And, I would hate to be the one who has to face students and parents explaining why they should sign the surcharge note.

Political Analysis—Delegate Pesci

This model would appeal to legislators, governors, and taxpayers because of its simplicity and ease of implementation. It makes a clear distinction between tuition (defined as instructional fees) and state subsidy. As taxpayers, residents would be entitled to, and receive, the subsidy. Nonresidents would not be entitled to the same subsidy, but would be provided with the opportunity to earn a degree away from their residential settings. No legislation would be needed for its implementation. As a result of conversations with many legislators and some governors, I am of the impression that they understand and appreciate the economic, social, and cultural benefits of having nonresidents on public college campuses. However, many find it difficult to justify to their constituencies even a partial subsidization of nonresident students. This model, then, would be viewed positively by legislators, governors, and taxpayers as realistic in light of the political and fiscal problems which face the states.

With regard to the operational aspects of the model, I question the penalties that would be added for late payment of the surcharge installments. Can these penalties be justifiably charged without creating a legal question? Also, the model stipulates that "a student who required more than the normal number of semesters to complete the degree would be liable for only the total amount of the surcharge indicated on the initial fee card." Consider the full-time student, with incompletes and failures in several courses, who needs one or more semesters to complete requirements for a degree. Does the above quote mean that such a nonresident student would receive a state subsidy for failure?

A major weakness of this model is the apparent perpetual nonresident status after initial matriculation. The nonresident is locked into this status unless he or she withdraws from the institution and then returns later as a resident. There must be some recognition that a nonresident student can change residency status without dropping out of college.

Legal Analysis—Professor Vestal

This model calls for a determination of residency at the time of enrollment which controls during the entire period of the degree program. A student, remaining a student, could not become a resident of the state. If a student were to take 6 years working on a BA, he or she could never become a resident during that time even if individual circumstances indicated the student had established a permanent residence with intent to remain. This inability to become a resident is an irrebuttable presumption of nonresidency, and is subject to constitutional attack.

The definition of legal residence included in the model may pose some problems, since the criteria for determining resident status are considered to be cumulative. Some questions arise with regard to the provision that one can become a resident only if one has filed an income tax return "which report[s] in-state tax liability for all income earned during the previous year." This latter phrase is troublesome and needs clarification. A person who has earned money outside the state (through summer employment, for example) may receive a tax credit for tax paid in the foreign state. There would not be in-state tax liability for all income earned during the previous year. Also, not all states have an income tax. This definition attempts to key residency to a factor which is not primarily related to education or intent to stay; the tax return is part of the tax structure and it is questionable whether it should be one of three controlling factors in this determination.

The requirement that a student drop out for a year before becoming a resident of the state probably is constitutionally deficient. A provision of this sort is not unusual. Colorado, for example, had a provision, Colo. Stat. 124-18-3(3), reading:

> An emancipated minor or adult student who has registered as a full-time student for more than eight hours per terms shall not qualify for a change in his classification for tuition purposes unless he shall have completed twelve continuous months of residence while not attending an institution of higher learning, public or private, in the state or while serving in the armed forces.

This provision was held unconstitutional as violating the equal protection provision of the Constitution in *Covel* v. *Douglas*, Colo., 501 P.2d. 1047 (1972), Sert. den. 93 S. Ct. (1973). The statutory provision was viewed as establishing a conclusive presumption which was impermissible. This conclusion was also reached in *Robertson* v. *Regents of the University of New Mexico*, 350 F. Supp. 100 (D.N.M. 1972), which involved a restriction that residency could not be obtained unless the applicant had "maintained domicile in this state for a period of not less than one year during which entire period he had not been enrolled, for as many as six hours, in any quarter or semester, as a student in any such institution." The irrebuttable presumption concerning residency was held to be "unreasonable, arbitrary, and violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and Article II, Sec. 18 of the Constitution of the State of New Mexico."

The Nebraska Supreme Court, in *Thompson* v. *Board of Regents*, 187 Neb. 252, 188, N.W.2d. 840, 842, (1971), was faced with an attack on a statutory provision stating:

> No such person shall be deemed to have established a residence in this state during the time of attendance at such state institution as a student, nor while in attendance at any institution of learning in this state. . . .

The trial court held this provision to be unconstitutional. When the matter was considered in the Supreme Court, it held the provision constitutional. It should be noted that the Nebraska legislature repealed the clause under consideration in the *Thompson* case and provided for an initial residency requirement of 1 year.

A challenge to the North Carolina residency requirements concerning tuition is found in *Glusman* v. *Trustees of the University of North Carolina*, 281 N.C. 629, 190 S.E.2d. 213 (1972). The trial court decreed:

> . . . that the tuition regulations which provide that the residence status of any student is forever to be determined as of the time of his first enrollment in an institution of higher education in North Carolina, and that residence status may not thereafter be changed if he continues re-enrollment without first having dropped out of school for at least a six-months' period, is declared unconstitutional.

The Supreme Court of North Carolina reversed the decision of the trial court and held that the state could require 6 months presence in the state while not a student as a prerequisite to attaining residency classification. The Supreme Court of the United States recently vacated the North Carolina judgment and remanded it for further consideration in light of the *Vlandis* decision, 93 S. Ct. 2999 (1973).

The four recent law suits show the uncertainty about the constitutionality of a provision precluding becoming a resident while a student. Courts held such provisions invalid in Colorado and New Mexico. The provision was upheld in Nebraska but the law was changed. In North Carolina the matter has been remanded for further consideration.

In the *Vlandis* case itself, the Supreme Court stated, "nor should our opinion be construed to deny a State the right to impose on a student as one element in demonstrating bona fide residence, a reasonable durational residency requirement, which can be met while in student status," 93 S. Ct. at 2236. Implicit, seemingly, is the inference that the Court would strike down a durational residency requirement which could be met only while *not* a student.

Thus, there is a serious question about the definition of resident which is included in this model. The Court has accepted the 1-year period of presence within the state before one can become a resident, *Starns* v. *Malkerson*, 326 F. Supp. 234, aff'd 91 S.Ct. 1231 (1971). The language quoted from the *Vlandis* case, however, indicates that the court is going to insist that one be allowed to meet this requirement while in a student status. Requiring nonstudent status for a period of 1 year to meet the durational requirement for residency would seem to be unconstitutional.

Reaction—Robert Carbone

The major criticism of the surcharge model, stressed by three of the analysts, is that it creates an irrebuttable presumption of nonresidence and thus it would very likely be invalidated by the courts. In response, I return to a point made by Dr. Van Alstyne. She wrote: "Since the model makes a clear distinction between tuition and subsidy, the rationale for determining the surcharge is entirely separate from the rationale for determining the tuition level." This is the crucial point. If we insist on viewing payments for education in the traditional sense—that is, only as tuition—it is natural that legalistic discussions of irrebuttable presumptions will persist. However, separating the two concepts of tuition and subsidy frees us to consider a new line of reasoning.

Suppose we wipe out the present method of making students pay for college attendance and substitute instead a new, double payment method;

namely, tuition on one hand and subsidy on the other. Under this scheme, there is no relationship between tuition and residency since tuition is the same for all students regardless of their place of residence. A student who came to the state to study would be free to establish residency whenever he or she met the stated qualifications for any given purpose, but this would not affect instructional fee (i.e., tuition) since that is the same for all students. Thus, it can be argued that such a student enjoys the same benefits of residency that all other students enjoy.

Now, consider the second form of payment—subsidy. The state commits itself to subsidize the education of those students who *at the time of initial enrollment* were residents and thus entitled to state support. Those students who, *at the time of initial enrollment*, cannot substantiate resident status are asked to pay a fee which is, in effect, the purchasing of the right to attend a state institution. This is done in the form of a note (contract) payable over time but committed at one point in time—initial enrollment. This establishes a clear relationship between subsidy (or, the right to attend) and residency. This right is determined once and only once. The legal points outlawing irrebuttable presumptions apply to determinations of student charges *subsequent* to initial classification. Since under this scheme there is no subsequent determination of subsidy (or, right to attend), it is difficult to see how the legal point pertaining to irrebuttable presumptions would apply. Admittedly this is a layman's approach to a legal issue but, at the very least, it is a point that might well be tested in the courts.

RESIDENT STUDENT FEE REMISSION MODEL

The practice of charging differential tuition for resident and nonresident students made it necessary for public institutions to develop detailed residency classification criteria. Students who satisfied these criteria received educational subsidies in the form of low tuition, and students who failed to satisfy the criteria paid higher charges. When legal decisions and new age of majority laws introduced complications in the once relatively straightforward process of residency classification, the efficacy of the traditional process came under question. If an institution's tuition income could be markedly influenced by ever changing student circumstances, perhaps some new method of distributing state subsidies to resident students would be advisable.

The tuition model described below eliminates any consideration of a student's personal situation *after initial matriculation* in determining whether or not that student receives an educational subsidy from the state. Instead, the Resident Student Fee Remission Model bases this determination on conditions that existed *prior to initial matriculation*—specifically, the student's status at time of graduation from high school. It calls for a single tuition rate for *all* students at a given level of instruction but provides a substantial remission of fees to those resident students who are graduates of an in-state high school or those resident students who attend under "extraordinary circumstances." Thus, the scheme presented here seemingly eliminates the differential tuition system but, in fact, it preserves the distinction between students entitled to a state subsidy and those who have come to the state for the purpose of entering a public college or university. The direct net cost to residents would remain low.

Operational Aspects

The Resident Student Fee Remission Model established a constant condition—that is, location of the high school from which the student graduated—as the single factor in determining the actual amount of out-of-

pocket fees a student will pay at a public college or university. Any consideration of the student's age, marital status, place of domicile, voter registration, or income tax situation at any time subsequent to initial matriculation is held to be irrelevant to determination of tuition. Since these latter factors tend to change as the student progresses in college, the fee remission scheme provides a tuition system less subject to fluctuation. Students not entitled to a state subsidy when they enter the institution would have no opportunity to claim such a subsidy in the future.

Ostensibly, tuition would be the same for all students at a given level of instruction and, under this scheme, might be based on some determination of actual cost of instruction, exclusive of capital costs. Resident students who qualify for fee remissions would be more keenly aware of the annual subsidy each received from the state. Furthermore, taxpayers of the state would know that they provide no direct instructional subsidy to nonresidents. While the announced tuition levels would be higher than those currently found in most public colleges and universities, the actual out-of-pocket cost to *resident* students would remain low.

When a student applied for admission to a public college or university, a determination of entitlement for state subsidy would be made based on a statute, governing board policy, or institutional regulation that said: Any graduate of an in-state high school (whether it be public or private) is entitled to a remission of tuition not to exceed 75 percent of actual instructional costs during any term provided that—

1. the person(s) upon whom the student is dependent maintained legal residency within the state for 12 consecutive months immediately prior to the student's graduation from high school; or

2. the student is a financially independent adult or emancipated minor who has maintained legal residency within the state for 12 consecutive months immediately prior to his or her graduation from high school.

For these purposes, legal residency within the state would be defined as—

1. being physically present in the state for the durational period except for short periods of temporary absence;

2. establishing a domicile in the state which is the person's true and permanent place of habitation, in which the person intends to remain, and to which the person intends to return following temporary absence;

3. filing income tax returns which show an in-state permanent address and which report in-state tax liability for all income earned during the previous year.

This simple test would permit the institution to classify once and for all time the vast majority of students seeking admission, since, at the time of graduation from high school, the residency status of virtually all students is in itself a simple matter uncomplicated by attainment of the age of majority, financial independence, voter registration, marriage, or other factors associated with older citizens. The student's fee card could be produced showing gross tuition (i.e., cost of instruction at the appropriate level), amount of state subsidy if warranted, and amount of net tuition to be paid by the student. Entitlement to state subsidy would subsequently appear on all future fee cards produced for a given student, if such entitlement was initially granted.

In this manner, from 90 to 95 percent of all students could be initially classified for tuition purposes without difficulty. Some, but not all, of the remaining 5 to 10 percent of students might attend under circumstances that would require further investigation. Thus, the work of residency classification officers would be limited to this relatively small portion of the student body. The institution would have authority to grant special fee remissions to any student within this remaining group who attended under "extraordinary circumstances." For example, special fee remissions could be granted the following classes of students:

1. Graduates of out-of-state high schools who, at the time of graduation, were dependent upon parents who were legal residents of the state in which the college is located

2. Applicants who had not graduated from high school or who had received high school equivalency but who had attended schools within the state for 5 or more years

Determining Residency

The process of residency classification is the central function of the resident student fee remission model; once the student's initial classification had been determined there would be no need for further classification machinery. Residency classification officers would be concerned only with new freshmen, first-year graduate students, and students transferring from other institutions. This should greatly reduce the workload in these offices and simplify the entire residency classification operation. Since the initial determination is based upon a set of circumstances that are true only at a fixed point in time—the date of high school graduation—the task of reviewing student requests for reclassification would be eliminated.

It is assumed that this scheme would also eliminate legal actions brought by students seeking reclassification. Recent years have seen a sharp increase in the number of such suits filed against institutions in all parts of the nation, and relief from this expensive and time-consuming activity would be welcomed by educational leaders. Of course, each state or institution that implements the resident student fee remission idea is likely to receive a legal challenge of the basic tenet of this scheme; namely, that a state can distribute its higher education subsidy to students based on the fact that they graduated from a high school in that state. This is clearly a matter for the courts to decide, and there can be no doubt that they will be given that opportunity wherever this scheme might be established.

Low Tuition

Outwardly, this model for tuition assessment would seem to violate one of the primary reasons for seeking renovation of the traditional differential tuition system. A single, high tuition level would be established for all students. Yet the scheme does help keep the actual out-of-pocket cost to resident students at a significantly low level—in the example given here, at 25 percent of actual cost of instruction. It is likely that the amount of state subsidy to each student—that is, the proportion of tuition remitted back to the student—will vary widely from institution to institution. Each governing board or state legislature clearly has the privilege of setting tuition and subsidy levels in keeping with its own philosophy regarding the proper mix of personal and societal responsibility for supporting higher education.

Taxpayer Appeal

The model suggested here may suffer from initial resistance by many taxpayers since it does seem to suggest a higher tuition level for all resident students. Compensating for this is the assurance that can be given by institutional and state authorities that resident taxpayer dollars would not be underwriting the instruction of out-of-state students. It would be important for any institution or state considering the implementation of this model to make clear that the fee remissions aspect of the plan does insure a low net cost to resident students and thus gives proper recognition to the long-term support of the state's higher education system by resident taxpayers.

Budgetary Aspects

A simple demonstration of the way the fee remission model would operate can be given by describing a hypothetical public institution. For purposes of

illustration, let us assume that a general state college in a given state desires to implement the model. The majority of students attending this college are undergraduates; there is a small graduate program and one professional school. Its enrollment breaks down as follows:

	Total enrollment	Students entitled to fee remissions	Out-of-state students
Lower Division	5,000	4,250	750
Upper Division	3,500	2,975	525
Graduate	1,300	1,040	260
Professional	200	140	60

The college is able to ascertain its costs for instruction and general administration by levels. Basic tuition charges are set at 100 percent of these costs. Further, it determines that 75 percent of instructional costs should be remitted to resident students. Thus, it can report the following figures:

	Tuition charges	Amount of fee remissions	Out-of-pocket costs to resident students
Lower Division	$1,200	$ 900	$300
Upper Division	$1,500	$1,125	$375
Graduate	$1,800	$1,350	$450
Professional	$2,500	$1,875	$625

The total amount of potential tuition income is calculated as follows:

Lower Division	5,000 students	X	$1,200	=	$6,000,000
Upper Division	3,500 students	X	$1,500	=	5,250,000
Graduate	1,300 students	X	$1,800	=	2,340,000
Professional	200 students	X	$2,500	=	500,000
			Total		$14,090,000

The amount of money required to provide fee remissions for all qualified students would be:

Lower Division	4,250 students	X	$ 900	=	$3,825,000
Upper Division	2,975 students	X	$1,125	=	3,346,875
Graduate	1,040 students	X	$1,350	=	1,404,000
Professional	140 students	X	$1,875	=	262,500
			Total		$8,838,375

Therefore, the institutional budget would look something like this:

Income		Allocations	
Tuition	$14,090,000	Instruction	$14,090,000
State appropriations	14,338,375	Fee remissions	8,838,375
Federal funds	140,000	Administration	2,100,000
Overhead on grants	135,000	Physical plant	1,800,000
Gifts and endowments	22,000	Student services	1,400,000
Other sources	103,000	Public service	500,000
		Other	100,000
Total	$28,828,375	Total	$28,828,375

As the figures above indicate, direct state appropriations account for slightly less than half the cost of running the institution. Tuition provides almost an identical amount. Yet, direct costs to resident students remain low, ranging from $300 for a lower division student up to $625 for a student in the professional school. Students from out of state are required to pay a substantially higher tuition since they are not entitled to a state subsidy. Thus, the tuition model applied here would seem to preserve the differential between residents and nonresidents, hold down actual cost to resident students, and eliminate many of the legal and administrative pitfalls found in the traditional tuition system generally utilized by public colleges and universities at this time.

COMMENTARY

Economic Analysis—Dr. Van Alstyne

As in the previous section, the comments that follow are offered in response to questions posed about this model.

Question: Does the model suggest a realistic balance between individual and state contribution toward cost of education?

Clearly the answer to this question would depend upon the level of the fee remission. See my general comments and my response to this question with regard to the surcharge model.

Question: What is the effect of the model on long-range support for public institutions?

The effects of this model on the long-range support for public institutions depend on the knowledge people have and the certainty they attach to

tuition levels as compared with fee remission. I think we can safely speculate that while students, parents, and taxpayers would have less than perfect knowledge of tuitions and fee remissions, they are likely to have more information about and attach more certainty to tuition levels than fee remissions. Consequently, although the intended dollar effects of this model are identical to the intended effects of the surcharge model, the actual effect is a sharp one-time increase in *published* tuition rates which would have marked negative impact on incentives to enroll in public colleges. If enrollment opportunities are not perceived as equally available, long-range support for public institutions would diminish.

Question: What effect will it have on institutional budgets, especially on initial implementation?

If there are indeed negative impacts on enrollments, the effect on institutional budgets, especially on initial implementation, is also likely to be negative.

Question: Will implementation of the model in public institutions in a state have any effect on private or proprietary institutions?

The likely impact of raising published tuition levels to include that part of the cost of education formerly provided by state appropriations, even though it is to be remitted to resident students, would be to bring tuition at public and private institutions closer together, in the minds of prospective students making college choices. Thus, public institutions might face sharply lower enrollments as students in the lower income ranges do not enroll at any institution and students in the upper income ranges go to private institutions.

Question: What influence might it have on interstate migration of students to public (or private) institutions?

Given probably adverse impacts on incentives to enroll, total enrollment would go down. Interstate migration would be reduced because of reduction in total enrollment by reason of increased fees and because students would have imperfect knowledge of fee remissions. Students are remitted fees if they stay in their home states, but not if they migrate out of state. Again, there is a question about knowledge and certainty of the tuitions and the fee remissions.

Question: In what ways will it influence current proposals for funding higher education (Carnegie, CED, etc.)?

See my response to this question with regard to the surcharge model.

Question: How realistic is the model in light of historical trends and future projections for the funding of higher education?

The proposal does not fit into the mode of incremental change which has characterized the evolution of financing higher education in this country. Implementation of the plan would be extremely difficult if it were done gradually over a period of time with moderate periodic increases in published tuition levels; if it were done at one time, the published increases in tuition levels would be staggering.

Basically we should differentiate as to whether the reform proposed in the operation of a tuition system is fundamental to the system or marginal to the system. I think we could argue that the tuition system which we have at public institutions is working well. The problem which this solution addresses is important but not central, in a fundamental way, to the viability of the entire system. Then we must ask whether we want to risk destroying a system which is working rather well to find a remedy for a particular problem, especially when alternative solutions are available to solve that problem which do not have devastating side effects on the original tuition system.

Question: Does the model contribute to the equity and/or efficiency of distribution of educational subsidies in public higher education?

It is altogether likely that the plan would have a differential impact on students' educational aspirations depending on income. Low income students are skeptical about promises of aid, including tuition remissions. They are more likely to be deterred than are students from higher income groups. This would lead to even greater gaps in educational opportunity and greater inequity between income groups than now exist. It would also appear that any system which involves wholesale payments and offsetting remissions, even if they are merely paper transactions or accounting transfers, is bound to be very inefficient, and an administrative headache.

Educational Analysis—Professor Kauffman

This model raises a public policy issue of the first order. Setting tuition levels at full cost and providing fee remissions to in-state students establishes a principle of similar payments or subsidies to resident students who desire to attend private colleges. For that reason the model is likely to appeal to officials of private colleges and universities. My main concern is that this model would endanger the concept of low-cost public institutions by emphasizing full costs and the amount of state subsidy. I see this as an erosion of the low-tuition principle. It is a drastic solution for a relatively minor national problem.

Another danger, in my opinion, is the political issue that the model raises: Should fee remissions be made regardless of need? Even if you think of the fee remission as a "scholarship," we are talking about factors which have significant psychological or attitudinal dimensions. We have just about stopped using the term "scholarship" in providing financial aids. The entire emphasis is on student need. Further, emphasis is being placed on aid to students, wherever they go, rather than on aid to institutions. If this model were implemented we could cease talking about low-cost tuition. Rather we would get into debates about the amount of the subsidy or remission each year and where the student could spend the remission. My experience and perceptions lead me to be wary of starting such a debate, and it is likely that public college presidents would share this view.

Again, I question the major assumption on which this model is based. It assumes that a state can establish a "constant condition" with regard to residency classification—in this instance, student status at time of high school graduation. How realistic is it to suggest that there be a single criterion for residency classification and that all other objective factors (age, place of domicile, income tax situation, etc.) be considered "irrelevant" with regard to tuition? The courts have recently held that it is illegal to freeze permanently a student's residency status. Since classifying students "once and for all time" seems to create an irrebuttable circumstance, this scheme seems to be contrary to current legal thinking.

As for the single criterion—high school graduation—it has some weaknesses. People move to a state *after* graduating from high school, establish residence, and then enroll in a college or university. In this model there is undue reliance on the presumption that all students enter college immediately after high school graduation. Given the number of students who enter later in life and/or reenter several times over a lifetime, the high school status may be unduly restrictive.

It would be extremely cumbersome to administer a fee remission system to 75 percent or more of an institution's students in order to deal with the 25 percent or less who might be nonresidents. There are complex budgetary implications as well and one would have to adjust tuition levels and/or fee remissions *each* semester in order to manage such a system. There would also be the computations of pro-rata remissions for part-time students. This might result in a cost-per-credit approach detrimental to full-time accelerating students.

It is unlikely that this model would result in reduction of the work load of residency classification officers. Each semester they would have to deal with those students who petition for a change in residency status and insist on a due-process consideration of their claims. Is there any evidence that residency classification officers are now overwhelmed by such requests? At

the present time, an initial classification is made concerning residency status of first-time students. That classification is maintained throughout the period of enrollment, unless a student can substantiate a claim for a change in status. I do not see how this model would change that. Nor do I see how it would "eliminate legal actions" related to reclassification problems. However, the most dangerous aspect of the model is that it would threaten the low-tuition principle, and this is too great a risk for the relatively mild disease that requires our treatment.

Political Analysis—Delegate Pesci

This model would also appeal to legislators, governors, and taxpayers. The fee remission aspect of the model insures a low charge for resident students. Most state legislators generally accept the low-tuition principle for postsecondary education. Also, this model would not either limit or increase legislative or executive oversight of higher education to any degree.

I am concerned about the statement that "students not entitled to a state subsidy when they enter the institution would have no opportunity to claim such a subsidy in the future." This policy would be entirely too inflexible. There must be some recognition of the fact that some nonresidents might gain resident status. It cannot be assumed that this model would eliminate legal actions brought by students seeking reclassification. To assume that it would may be naive.

In my opinion, a determination of entitlement for state subsidy would best be made by legislative action. And, the resulting statute, not the institution, should identify which "extraordinary circumstances" would qualify a student for special fee remissions. This would require very careful wording to insure uniform and even-handed administration of this special provision. The "extraordinary circumstances" category would probably include a greater number of students than you might think—for example, adult learners who moved into the state after they completed high school and who established legal residence in the state prior to going to college. All such students would have graduated from out-of-state high schools and would have been dependent upon parents who were residents of another state. Many such individuals are entering college degree programs now and their number is likely to increase.

Finally, in identifying persons who did not graduate from high school but who now want to attend college, the model suggests that those "who had attended schools within the state for 5 or more years" would be entitled to special fee remissions. What is the magic about attending 5 or more years? If a student attended only 4 years but was a resident of the state, would that

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student not also be entitled to a fee remission? Also, 2-year college transfer students might need to be specifically included as an extraordinary class of student.

Legal Analysis—Professor Vestal

The major problem with this model is its central thesis that residence for tuition purposes can be determined by residence at the time of high school graduation. This model is clearly unconstitutional and could be struck down under one of several theories. Two legal theories under "equal protection" that could successfully be used to void this model are briefly summarized below.

Equal Protection—Rational Bases. A state-supported institution can constitutionally establish rules determining which students are entitled to a lower tuition rate and which students must bear the full cost of their education. The purpose is to differentiate (1) those who are residents and have substantially supported the state educational institution through state income, sales, and property tax, from (2) those who come to the state only to take advantage of educational services, who have not or do not intend to contribute to state coffers, and who do not intend to become residents of the state. As the Supreme Court has said:

> We fully recognize that a State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis. *Vlandis* v. *Kline*, 93 S.Ct. 2230, 2237 (1973).

The means used to carry out this legitimate state objective must be rationally related to its end. In this tuition model the means used is the classification of a student's residency by his or her status at the time of high school graduation. The traditional means of determining residency is presence in the state and establishment of permanent domicile. To single out residency at high school graduation would not seem to be a reasonable means of carrying out the state policy. For example, a person born in and raised through high school age in Illinois might come to Iowa and work for a period of years. This person would never be allowed to receive the lower tuition rates. This criterion does not successfully distinguish between those who have legitimate ties and connections with Iowa and those who come only for education, with no past contact or intent to stay in the state. Under this theory, this model would be an unconstitutional violation of equal protection. The test applied is called the rational basis test and is the least restrictive of the variety of tests used by the Supreme Court.

Equal Protection—Close Scrutiny. The close scrutiny test, more stringent than the rational basis test, has not been applied to the nonresident tuition

problem. The courts in both *Starns* v. *Malkerson*, 326 F.Supp. 234 (D.C. Minn. 1970), affirmed without opinion, 410 U.S. 985 (1971), and *Sturgis* v. *State of Washington*, 368 F.Supp. 38, affirmed without opinion, 94 S.Ct. 563 (1973), used the rational basis test, not the strict scrutiny test, in resident tuition cases.

Litigants have often tried to apply the strict scrutiny test used in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), to the resident tuition problem. *Shapiro* v. *Thompson* is distinguishable, however, since it involved a fundamental right, interstate travel, the right to move and reestablish a permanent home in another state. Out-of-state students are not denied the right to come to another state for college but they are required to pay a user's fee. This is not a total denial of a state benefit involving the basic necessities of life (welfare) as was the case in Shapiro. Education, especially a college degree, is not a fundamental right, *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973). *Shapiro* can also be distinguished as involving an illegitimate state purpose. The state's specific objective in requiring a durational residency requirement for welfare was to prevent the poor from moving into the state. The purpose of the tuition differential is not to prevent interstate travel but to equalize the cost, which is legitimate. Thus the strict scrutiny test does not apply since there is no fundamental interest or suspect class such as race, alienage, or sex. However, if this test were applied, the tuition remission scheme would surely be unconstitutional unless the state could show a compelling interest in the classification. Administrative convenience would not be a sufficient justification for this unequal treatment of similarly situated individuals.

Even though the close scrutiny test does not apply to the college tuition problem, the courts sometimes use a mixture of the two tests and consider the compelling state interest and the less restrictive means available to satisfy the legislative purpose. In *Vlandis*, the court found that other reasonable criteria for evaluating residence were available to Connecticut. The court seemed to be suggesting the following scheme taken from an opinion by the Attorney General of the State:

> In reviewing a claim of in-state status, the issue becomes essentially one of domicile. In general, the domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning. This general statement, however, is difficult of application. Each individual case must be decided on its own particular facts. In reviewing a claim relevant criteria include year-round residence, voter registration, place of filing tax returns, property ownership, driver's license, car registration, marital status, vacation employment, etc. 93 S.Ct. at 2237.

The dissent in *Vlandis* admonishes the majority for confusing the two equal protection tests while reaching a due process result. They strongly urge

resorting to the plain and simple rational basis test where this tuition plan would have been upheld. Since this really involves a financial impact, not a complete deprivation of the right to attend the University, the dissent felt deference should have been given to the judgment of the state.

In his concurrence in *Vlandis*, Justice White uses a sliding scale test, a mixture of the two, in weighing the value of the individual interest and the state justification. Since the difference between the two tuition rates is substantial, and the state interest is only administrative convenience, when balanced, this is a violation of equal protection.

If the state's justification for this high school attendance requirement is to try to distinguish between old and new residents, there is a very basic equal protection conflict. In *Shapiro v. Thompson*, supra, the court rejected a classification based on past contribution and payment of taxes, saying:

> This would logically permit the State to bar new residents from schools, parks, and libraries, (to) deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services. 349 U.S. at 632-633.

A state cannot discriminate among various classes of bona fide residents. Once a student is a resident, he or she is entitled to in-state tuition no matter where his or her high school was located.

Aside from the two legal theories outlined above, this model raises some other serious legal issues.

Irrebuttable Presumption. This high school graduation criterion is essentially an irrebuttable presumption of nonresidency. An out-of-state high school graduate can never get the lower tuition rates no matter what changes have occurred in his or her individual situation. This permanent classification is clearly unconstitutional as a denial of substantive and procedural due process.

Irrebuttable presumptions "have long been disfavored under the Due Process Clause." 93 S.Ct. at 2233. In a recent case, *Bell* v. *Burson*, 402 U.S. 535 (1971), the court struck down, on procedural due process grounds, a state statute involving an irrebuttable presumption. Likewise in *Stanley* v. *Illinois*, 402 U.S. 535 (1971), the court struck down a state statute involving an irrebuttable presumption that all unmarried fathers are unqualified to raise their children. *Vlandis* involved the Connecticut scheme for determining residency which presumed that all applicants who applied to the university from an out-of-state address had no real intention of

becoming residents. Thus they were permanently required to pay nonresident tuition without an opportunity to change or challenge this classification. The fee model at issue here creates a similar permanent nonresident classification for those who graduate from an out-of-state high school. In *Vlandis* the scheme was held an unconstitutional denial of due process. This same result is highly probable for this proposal.

Procedural Due Process. Sufficient information is not available on these models to determine if the procedural due process requirements have been met. Generally, there must be adequate publication of the rules determining residence, notice of appeal of classification, and procedures for appeal; a reason must be given for denial of in-state classification. The Federal Administrative Procedure Act would not normally apply to a state institution but many states have acts that are similar and require additional procedural steps.

This model attempts to eliminate the machinery for appeal and reclassification. This is legally impossible since there are always mistakes in the original classification and changes in individual circumstances that justify reclassification. The best way to eliminate expensive legal suits is to have a clear and fair procedure applied without arbitrary action to each individual. Permanent classification is impossible even if the basic tenet of distinguishing those students who are in-state high school graduates from those who are not is accepted.

One-Year Durational Residency Requirement. The requirement of a 12-month residency within the state prior to high school graduation would probably be constitutional in the case of classification of a freshman for that single year. In *Sturgis*, supra, the Supreme Court upheld without opinion, a 1-year durational residency requirement in Washington under the rational basis test. The lower court felt the issues had already been settled in *Starns*, supra. The strict scrutiny test used in *Shapiro* did not apply. The purpose of the tuition differentiation was not to prohibit out-of-state students from attending the university, and in fact it did not deter a significant number. The purpose was not illegal as in *Shapiro* where the specific objective was to exclude the poor from settling in a new state. There is no fundamental interest in higher education and the nonresidents were not being totally denied education. The 1-year waiting period may be justified as a reasonable way to achieve a partial cost equalization. The *Sturgis* court, quoted *Starns* saying:

> We believe that the State . . . has the right to say that those new residents of the State shall make some contribution, tangible or intangible, towards the State's welfare for a period of twelve months

> before becoming entitled to enjoy the same privileges as long term residents possess to attend the University at a reduced resident's fee. 368 F.Supp. at 41.

The one dissenting Justice in *Sturgis* vigorously argues that *Starns* and the majority are wrong. His theory is that when a state does provide a public benefit, however abundant, it must be available to all residents in a nondiscriminatory manner. Upon examining the benefit withheld, that is, the economic opportunity to participate in a state service on an equal footing with existing residents, and examining the basis for the classification, recent interstate travel, there must be a compelling state interest, or this is a denial of equal protection. Whether the classification actually deters interstate travel or not, is irrelevant. He finds the classification at issue invidiously discriminates between citizens, and as such is a denial of equal protection.

Also, Justice Marshall and Justice Brennan in their concurring opinion in *Vlandis*, supra, are not convinced of the constitutionality of the 1-year durational residency requirement. They feel there is still an equal protection problem in a state setting residency requirements for the receipt of rights and benefits. The trend has been to eliminate such durational requirements in most other areas: *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), in welfare cases; *Dunn* v. *Blumsten*, 405 U.S. 330 (1972), for voting; *Memorial Hospital* v. *Maricopa County*, 94 S.Ct. 1076 (1974), concerning care of an indigent patient in a county general hospital. In the *Memorial Hospital* case, the Supreme Court stated that all residency requirements were not per se unconstitutional as unequal treatment of old and new residents. The Court then referred to the durational requirement in *Vlandis* as a constitutional example that the Court had declined to strike down. There still is a question in the minds of some members of the Supreme Court, but the majority has accepted this 1-year durational residency in *Starns* and *Sturgis* without opinion.

Miscellaneous Problems. The fact that this is a fee remission rather than a direct payment of a higher nonresident tuition does not change any of the constitutional problems.

This criterion is obviously geared to the traditional university student. As our population is becoming more mobile, and as many older people are returning to the universities, it seems unwise to base an entire fee system on residence at high school graduation.

The "extraordinary circumstances" in this model do attempt to correct some of the most glaring deficiencies. However, there are many other situations where the rule operates unfairly.

Conclusion. The basic tenet of this model, basing residence on high school graduation, would most likely be declared an unconstitutional violation of equal protection under the rational basis test. This one factor does not rationally distinguish between the students who have ties with the state and a right to enjoy the benefits of their own state-supported educational institutions, and the students who come to the state only to attend its educational institutions. This irrebuttable presumption of nonresidency is not flexible enough to handle fairly those persons who become residents of the state. The 1-year durational residency requirement would probably, however, be accepted by the courts.

Reaction—Robert Carbone

Three of the analysts made comments in the preceding pages that prompt some response. The following remarks may serve to extend the discussion of these issues a bit further.

Dr. Van Alstyne mentioned the possible negative effects on enrollment of publishing high tuition figures. Clearly this might well be the case. However, it is possible to view the situation from a more positive angle. If each high school graduate in a state was offered what, in effect, is a tuition *scholarship* worth several thousand dollars (actually $4,150 to an undergraduate in the hypothetical institution cited) when used in a public institution in that state, the net effect on enrollments might be extremely positive. Many students who had no plans to attend college would be reluctant to pass up such an offer. This "pump priming" effect is exactly what occurred when World War II veterans were granted G. I. Bill benefits covering college costs. Admittedly, the situations are not directly analogous but the fee remission, when viewed as a scholarship, may have the effect of encouraging enrollments rather than further depressing them.

The same line of thinking is also offered in response to Professor Vestal's comments regarding the use of high school graduation as a means of classifying students for tuition purposes. He questions whether or not this means is rationally related to the end—that is, setting preferential tuition levels for bona fide residents. If the fee remission can be regarded as a scholarship, then the end is defined differently. Preferential treatment is no longer the goal. Instead, the objective is to encourage high school graduates of a state to enter college so that the state will be provided sufficient numbers of trained people to satisfy manpower needs. The means to do this is a fee remission (scholarship) that has the effect of lowering tuition for students who have demonstrated a minimal level of academic achievement (viz., graduation from high school). The rational relationship between this end and means is clear. While this end is not the traditional

rationale for low tuition, there is no obvious reason why a state should be prevented from redefining this aspect of its total educational framework.

In another comment, Professor Vestal argues that basing fee remissions on the fact of graduation from an in-state high school creates an irrebuttable presumption and thus is unconstitutional. Again, this would seem to be the case only if one insisted on maintaining the traditional concept of a differential tuition system. Under the model presented, the relationship of residency to tuition is eliminated; all students pay the same tuition. Some students (i.e., those newly arrived in the state) must finance their education through personal sources. Others (i.e., graduates of in-state high schools and those attending under the "extraordinary circumstances" provision) are assisted in paying for their education by scholarships from the state. The scholarship is granted for a completely separate reason, as indicated in the model. (To be sure, this is again a layman's view of a legal matter which may indeed, as Professor Vestal pointed out in another context, sound perfectly reasonable to an educator but just the opposite to a lawyer.)

Professor Kauffman raises the issue of "need" in granting fee remissions. Obviously "need" would not be a factor just as "need" is not considered under the present system of distributing basic higher education subsidies—that is, low tuition in public institutions. Furthermore, the concept of need has been virtually destroyed as the basis for financial assistance since lower age of majority laws permit all students, even the offspring of wealthy parents, to claim below-poverty-level status as self-supporting adults.

Finally, it must be granted, as Professor Kauffman points out, that the fee remission model opens the question of "portable grants" for all qualified students which may also be spent in private institutions. This is obviously a matter that each state must decide individually, and it is a question that will not simply disappear if ignored.

SLIDING SCALE (MULTIPLE CRITERIA) MODEL

The traditional method of classifying students for tuition purposes in public colleges and universities throughout the nation is an overly simplistic and relatively inflexible administrative tool. As such, it is open to criticism and, judging by the number of legal decisions stemming from student classification cases, its inherent weaknesses have led to considerable administrative error. Its value clearly diminished when new voting rights and age of majority laws introduced complications in residency determination, and when higher tuition differentials motivated more and more nonresidents to seek reclassification in order to qualify for lower tuition rates.

Most existing classification systems are based on elaborate sets of residency criteria, and considerable subjective judgment is required of college administrators who must apply the criteria. Quite naturally, these judgments are often challenged, sometimes through legal action. The primary problem is the inability of existing classification systems to handle easily residency cases that fall in the gray area between "pure" resident and "pure" nonresident. Since there are only two tuition categories available to classification officers, the traditional systems cannot objectively and equitably accommodate students who meet some, but not all, of the established residency criteria. This uneven administration of the residency rules creates unnecessary administrative chores and much student frustration.

The Sliding Scale (Multiple Criteria) Model for tuition assessment presented in this section utilizes five generally accepted criteria of residency and provides a technique for objectively sorting students into one of nine tuition categories on a continuum between "pure" resident and "pure" nonresident.

This model illustrates how a set of residency criteria can be combined with a weighting scheme for placing these criteria in priority order. The resulting tuition classification scheme assigns the lowest tuition rate to students who

fit the stereotype of resident, and the highest tuition rate to students who fit the stereotype of nonresident. To illustrate its potential usefulness, the model is applied to a hypothetical institution to demonstrate how it will generate appropriate amounts of tuition income.

Operational Aspects

The purest stereotype of a resident student is a student who was born and raised in a given state, whose parents have paid and are still paying taxes in that state, who graduated from high school in that state, and who then entered a public college or university in that state. The purest stereotype of a nonresident student is a student who was born and raised in another state, whose parents reside in that state, and who graduated from high school in that state, but who then moved to the given state expressly for the purpose of entering a public college or university. However, a great many students fall somewhere in between these two extremes. A classification system more sophisticated than the simplistic systems currently in use is required to adequately classify such students for tuition purposes. The sliding scale model outlined here provides this more sophisticated method.

The initial step in developing any tuition classification scheme is the selection of defensible residency criteria. Five generally acceptable criteria are utilized in this example. They are legal status of the student, length of domicile in the state, location of high school from which the student graduated, tax status, and voter status.

These five major criteria are weighted so that the sum of weights of all is equal to one (1.00). Next, each major criterion is divided into a set of mutually exclusive subcriteria. These subcriteria must be such that each student can be sorted into one, and only one, of the subcategories. Weights are assigned to each of the subcriteria so that the sum of weights for each set is also equal to one (1.00). The effective weight of each subcriteria is computed by multiplying its weight by the weight of its major criteria. The following chart illustrates these initial steps:

Weighted Residency Criteria

Criteria and Subcriteria		Assigned Weights	Effective Weights
A. *Legal status of student*[a]	.40		
Dependent on in-state parent or guardian		.40	.1600
Dependent on out-of-state parent or guardian		.05	.0200
Independent; parent or guardian lives in state		.40	.1600
Independent; parent or guardian lives out of state		.15	.0600
		1.00	

B.	*Length of student's domicile in state*	.30		
	5 years or more		.50	.1500
	At least 4 years but less than 5 years		.30	.0900
	At least 3 years but less than 4 years		.10	.0300
	At least 2 years but less than 3 years		.06	.0180
	At least 1 year but less than 2 years		.03	.0090
	Less than 1 year		.01	.0030
			1.00	
C.	*High School student attended*[a]	.10		
	Graduate of in-state high school; parent or guardian lives in state		.40	.0400
	Graduate of in-state high school; parent or guardian lives out of state		.15	.0150
	Graduate of out-of-state high school; parent or guardian lives in state		.40	.0400
	Graduate of out-of-state high school; parent or guardian lives out of state		.05	.0050
			1.00	
D.	*Tax status*	.15		
	Carried as dependent on parent's or guardian's in-state tax return		.45	.0675
	Files own in-state tax return		.45	.0675
	Carried as dependent on parent's or guardian's tax return in another state		.05	.0075
	Files own tax return in another state		.05	.0075
			1.00	
E.	*Voter status*	.05		
	Registered voter in state		.75	.0375
	Registered voter in another state		.05	.0025
	Not registered to vote		.20	.0100
		1.00	1.00	

[a]If the student's parent is deceased and if he or she has no guardian, the place of legal residence of the parent at time of death will be utilized in those sub-criteria that require this information.

The chart reveals that the five major criteria are weighted so that the student's legal status receives the greatest emphasis (.40) while voter status receives the least (.05). The combined weights equal 1.00. Similarly, the subcriteria are weighted to give priority to some and relatively little emphasis to others. The weights of subcriteria, under "legal status" also equal 1.00, as do the weights in each of the other four sets of subcriteria. These weights are judgmentally determined and can be adjusted to reflect the general priorities of the institution, its governing board, or the body responsible for establishing residency criteria. However, the major criteria and each set of subcriteria must always add up to 1.00. The effective weight of each subcriterion is the product of its weight and the weight of its major criterion. For example, the legal status (.40) is multiplied by dependence on in-state parents or guardians (.40) yielding an effective weight of .1600 for that subcriterion.

Once the effective weights are established, students can be sorted into one subcriterion in each set, and a total residency score computed by adding the weights earned in all five sets. The following indicates residency scores of four hypothetical (but typical) students:

Typical Student Residency Scores

	Effective Weights
Student A	
Dependent on in-state parents	.1600
Graduate of in-state high school; parents live in state	.0400
Carried as dependent on parents' in-state tax return	.0675
Registered voter in state	.0375
Lived in state 5 years or more	.1500
Residency Score	.4550
Student B	
Independent; parents live in state	.1600
Graduate of out-of-state high school; parents live in state	.0400
Files own in-state tax return	.0675
Registered voter in state	.0375
Lived in state 4½ years	.0900
Residency Score	.3950

Student C

Independent; parents live out of state	.0600
Graduate of out-of-state high school; parents live out of state	.0050
Files own in-state tax return	.0675
Registered voter in state	.0375
Lived in state 3 years and 4 months	.0300
Residency Score	.2000

Student D

Dependent on out-of-state parents	.0200
Graduate of out-of-state high school; parents live out of state	.0050
Carried as dependent on parents' tax return in another state	.0075
Not registered to vote	.0100
Lived in state less than 1 year	.0030
Residency Score	.0455

Note that student A, who typifies the "pure" resident, earned the highest possible score in each set (.4550). Student D, the typical nonresident, earned an extremely low residency score (.0455). The lowest possible score is .0380, which would characterize the "pure" nonresident.

The next step in developing the classification system is establishing tuition categories that correspond to a range of possible residency scores. For example:

Tuition Categories	Range of Residency Scores
1	.4000 and above
2	.3500—.3999
3	.3000—.3499
4	.2500—.2999
5	.2000—.2499
6	.1500—.1999
7	.1000—.1499
8	.0500—.0999
9	.0001—.0499

Now each student can be placed in an appropriate tuition category. For example, the students identified above would be placed as follows: Student A-category 1; student B-category 2; student C-category 5; student D-category 9. It is important to point out that these tuition categories can be utilized at any level of instruction—lower division, upper division, graduate, or professional—since various graduated tuition rates can be assigned to the categories as institutional needs dictate. Therefore, this classification system can be used for all students enrolled in an institution, regardless of level of instruction. It can be applied to new freshmen, returning students, and transfer students. Furthermore, it can be used to classify part-time as well as full-time students, since students taking less than a full load of courses could be charged an appropriate fraction of the tuition required of full-time students in the same tuition category. Reclassification of any student can occur at any semester the student reports a significant change in the five factors. The system can best be illustrated by applying it to the budget of a hypothetical college.

Budgetary Aspects

Once again, the reader is asked to imagine a general state college—largely undergraduate, with a modest graduate program and one small professional school. It enrolls 10,000 full-time equivalent students, and its annual instructional costs (exclusive of capital costs) total $14,090,000, distributed as follows:

Lower Division	5,000 students	$1,200 per FTE student
Upper Division	3,500 students	$1,500 per FTE student
Graduate	1,300 students	$1,800 per FTE student
Professional	200 students	$2,500 per FTE student

The residency classification officer calculates residency scores on all 10,000 students and sorts them into appropriate tuition categories by level of instruction. The governing board decides that tuition at each level of instruction should range from full cost of instruction for "pure" nonresidents (tuition category 9) to one-third cost for "pure" residents (tuition category 1). The distribution of students among the tuition categories revealed an ogive curve heavily skewed toward category 1, low in the middle, and rising again toward category 9. The budget officer calculated anticipated tuition income at each level of instruction, by simply multiplying the number of students in each category by the tuition rate established for that category. The following four tables provide this information.

Lower Division

Tuition Category	% of Students	Number of Students		Tuition		Income
1	70%	3,500	X	$ 400	=	$1,400,000
2	16%	800	X	$ 500	=	400,000
3	2%	100	X	$ 600	=	60,000
4	1%	50	X	$ 700	=	35,000
5	1%	50	X	$ 800	=	40,000
6	1%	50	X	$ 900	=	45,000
7	2%	100	X	$1,000	=	100,000
8	3%	150	X	$1,100	=	165,000
9	4%	200	X	$1,200	=	240,000
		5,000				$2,485,000

Upper Division

Tuition Category	% of Students	Number of Students		Tuition		Income
1	70%	2,450	X	$ 500	=	$1,225,000
2	16%	560	X	$ 625	=	350,000
3	2%	70	X	$ 750	=	52,500
4	1%	35	X	$ 875	=	30,625
5	1%	35	X	$1,000	=	35,000
6	1%	35	X	$1,125	=	39,375
7	2%	70	X	$1,250	=	87,500
8	3%	105	X	$1,375	=	144,375
9	4%	140	X	$1,500	=	210,000
		3,500				$2,174,375

Graduate

Tuition Category	% of Students	Number of Students		Tuition		Income
1	60%	780	X	$ 600	=	$ 468,000
2	10%	130	X	$ 750	=	97,500
3	3%	39	X	$ 900	=	35,100
4	2%	26	X	$1,050	=	27,300
5	2%	26	X	$1,200	=	31,200
6	3%	39	X	$1,350	=	52,650
7	5%	65	X	$1,500	=	97,500
8	5%	65	X	$1,650	=	107,250
9	10%	130	X	$1,800	=	234,000
		1,300				$1,150,500

Professional

Tuition Category	% of Students	Number of Students		Tuition		Income
1	60%	120	X	$ 800	=	$ 96,000
2	10%	20	X	$1,000	=	20,000
3	3%	6	X	$1,200	=	7,200
4	2%	4	X	$1,400	=	5,600
5	2%	4	X	$1,600	=	6,400
6	3%	6	X	$1,800	=	10,800
7	5%	10	X	$2,000	=	20,000
8	5%	10	X	$2,200	=	22,000
9	10%	20	X	$2,500	=	50,000
		200				$238,000

Total Tuition Income	
Lower Division	$2,485,000
Upper Division	2,174,375
Graduate	1,150,500
Professional	238,000
Total	$6,047,875

This sliding scale tuition classification system would generate $6,047,875 in anticipated income from student fees. Since the institution had already been granted a state appropriation of $13,500,000 the total budget for instruction and general purposes would be:

Income		Allocations	
Tuition	$ 6,047,875	Instruction	$14,090,000
State appropriations	13,500,000	Administration	2,100,000
Federal funds	140,000	Physical plant	1,800,000
Overhead on grants	135,000	Student services	1,400,000
Gifts and endowments	22,000	Public service	500,000
Other sources	155,125	Other	110,000
Total	$20,000,000	Total	$20,000,000

Low Tuition

The tuition systems outlined in this report were developed with two major goals in mind—keeping tuition as low as possible and maintaining a differential between tuition levels for resident and for nonresident students. Both goals appear to have been achieved by the Sliding Scale (Multiple Criteria) Model. Tuition for students who demonstrate the most characteristics of a resident is proportionately low. Tuition increases for students who demonstrate characteristics of nonresidents.

Of course, it is obvious that tuition for "pure" nonresidents in not low under this system since such students are required to pay full cost of instruction.

The tuition levels set by the institution do, however, avoid the questionable practice of charging some students (usually lower division students) more than the cost of instruction. Clearly students at less expensive levels of instruction are not asked to subsidize those in more expensive programs under this scheme. In that sense, the model does exert a downward pressure on tuition levels.

Taxpayer Appeal

It has been observed that Americans are generally willing to accept conditions that appear to be fairly applied to all citizens and that have been objectively derived. They resent special privilege and arbitrary decisions. That being the case, it is likely that the citizens of any state, and their children who attend college, would react positively to the sliding scale tuition system outlined in this section. The system displays a clear element of fairness since tuition is proportionately related to several measures of any student's rightful claim to a state educational subsidy.

Resident students are assessed a "fair" share of instructional costs and no student pays more than the average cost of instruction at his or her level. The system also introduces greater objectivity into residency classification. Two elements of this objectivity can be identified. First, there is a greater number of possible tuition categories, so students who do not typify the stereotype of resident or nonresident are not arbitrarily forced into one or the other of these two categories. With nine categories for student assignment, classification officers are less likely to be called upon to rely on personal judgment in classifying students for tuition purposes. Secondly, objectivity is introduced by the weighting system from which student residency scores are derived. Admittedly, the original weights are a function of the value judgments of governing boards that specify high priority and low priority criteria. However, it is the student's own personal circumstances, rather than some administrator's judgment, that determines the specific tuition category to which the student will be assigned. These characteristics of fairness and objectivity should markedly increase taxpayer preference for the Sliding Scale-Multiple Criteria Model over the two-level system currently in use.

COMMENTARY

Economic Analysis—Dr. Van Alstyne

Question: Does the model suggest a realistic balance between individual and state contribution toward cost of education?

The essential distinction of this ingenious model is the sensitivity of the otherwise procrustean determination of student charge status. The weighting scheme and continuous sliding scale for determining degrees of claim to educational subsidies is very attractive because it avoids more arbitrary classification into only two groups for circumstances which are more complex than that. I would argue, however, that the specific criteria used in the determination of residency should be revised to reflect more economic content—and a longer time span.

This model offers superior opportunities for achieving the fairest balance between individual and state contributions toward cost of education. Sensitive criteria, for flexible determination of payment status, more closely approximate the real transfer of resources over the actual long time span. The determination of payment status made at the time of each payment of fees may not change much, if at all, over the regular period of matriculation, because the past tax support of parents and the future tax support of students—which should weigh heavily in the determination of the status—do not change much over the several year period the student is in school. Thus, it may in fact actually be harder to change payment status under this arrangement than under existing arrangements (whereby, for example, meeting a 1-year residency requirement will switch a student from out-of-state to in-state status even though the longer term realities do not change.)

Question: What is the effect of it on long-range support for public institutions?

I would judge that the effect, if any, on long-range support would be positive, to the extent that the model is perceived as more equitable. I would guess, however, that the attitudes of the public and of the state legislators are only marginally affected by knowledge of and attitudes toward the treatment of out-of-state students.

Question: What effect will the model have on institutional budgets, especially on initial implementation?

Under the plan as proposed there is no tight correspondence between the scale of payment status and the payment increments. What, for instance, is the rationale for assessing incremental charges along the payment scale and the fact of voting or not voting, however weighted? If the scaling criteria relate more closely to flows of economic resources, then the rationale derives in a more straightforward manner. To some extent, under current practice, the amounts of out-of-state tuition charges are determined residually by state appropriations committees on the basis of amounts needed to balance institutional budgets. Such a procedure could be adapted here so that there is not necessarily any particular budget impact even at the time of initial implementation.

Question: Will implementation of the model in public institutions in a state have any effect on private or proprietary institutions?

This model should be more neutral with respect to influences on decisions to attend public, private, or proprietary institutions than existing arrangements.

Question: What influence might it have on interstate migration of students to public (or private) institutions?

With more neutral effects on enrollments, this plan should reduce barriers to interstate migration.

Question: In what ways will it influence current proposals for funding higher education (Carnegie, CED, etc.)?

Major studies completed recently on the financing and organization of postsecondary education (including Carnegie Commission, Committee for Economic Development, National Commission on the Financing of Postsecondary Education, the two Newman reports, and the National Board on Graduate Education) did not treat this issue of tuition differential at all. It is of much more immediate concern to university administrators confronting changing ground rules resulting from recent court decisions.

Question: How realistic is the model in light of historical trends and future projections for the funding of higher education?

It is very responsive to new needs for sensitivity and flexibility in determining payment status. It introduces modest incremental changes while preserving the essential values of the existing system. Considerable thought, however, should go into construction of the framework to select relevant economic, rather than strictly legal, criteria and to generate consensus on the appropriate weights. But once built, and with periodic review and improvement, the framework should be easy to transfer to other jurisdictions.

If extended periods of time and real flows of resources were considered in determining the student payment status, the tuition model need not be fundamentally disrupted by changing rules with respect to the age of majority or by questions of whose residency (the student's or the parents) should be considered, because in the formulation *both* are used.

Question: Does the model contribute to the equity and/or efficiency of distribution of educational subsidies in public higher education?

This model permits much more equitable treatment of complex cases than do either in-state or out-of-state decisions now existing. The model should be easy to implement, and as people judge that they are treated reasonably, appeals of decisions would be reduced and administrative efficiency would be enhanced.

Educational Analysis—Professor Kauffman

While this model appears to be unduly complex to administer, it impresses me with its principle of equity. Some variation of it may well be the solution to the problem of dealing with nonresidents in public colleges and universities. One problem I see is that the computations for many students will have to be altered each semester since the weights on many of the subcriteria are altered with the passage of time. Thus, there would be a great deal of computational activity (i.e. administrative time and effort) each semester. Yet, I find the principle of the model to be appealing.

Would it be possible to simplify the procedures and the concept by reducing the number of subcriteria? Since the whole basis for reducing or subsidizing tuition for resident students (as compared with nonresidents) is that "taxpayers" ought to be treated differently than "newcomers," would it be possible to adjust tuition levels solely on the basis of length of residency of parents, or self, if independent? This would simplify matters considerably and such a simplified model would resonate well with the concept on which lower tuition for residents rests.

One complication would be the requirement that persons moving to a state 1 year (or 2, or 3, etc.) before enrolling would also have to pay tuition that is higher than a person with 5 years of residence. It would be necessary to set a time limit of years that is equated with "full contribution" to the state's economy and public benefits. At any rate, if legal, a somewhat simplified version of the Sliding Scale Model strikes me as acceptable and workable.

The legal question deserves considerable investigation. It may be that the courts will require public institutions to clearly classify each student as *either a resident or a nonresident* for tuition purposes and not permit intermediary classifications as this model suggests. Yet, the courts have upheld the concept of differential tuition for resident and nonresident students. Therefore, if the courts would permit anything *other* than a definite "one-or-the-other" status, a model of this type would be a way for states to distribute higher education benefits on a basis that differentiates persons on the length of residence in a state and thus on their potential contribution to the support of such benefits.

Political Analysis—Delegate Pesci

This model does recognize the multiple factors that go into determining residency. As a result, it maintains some flexibility. I don't believe that legislation would be required to implement this model, but I see some points in it that would be of interest to state legislators and governors.

This model does not address two questions. Will students be reclassified on an annual basis? How much would implementation of this model cost? Students may need to be reclassified annually because of the requirements of Criteria B, Length of student's domicile in the state, if for no other reason. Governors and legislators will want to know what the cost will be of calculating residency scores on students each year and also who will be sorting those students into appropriate tuition categories by level of instruction.

Some research is needed on how best to determine assigned weights of the residency criteria and subcriteria. One good example of this relates to the subcriteria for students who are "Independent; parent or guardian lives out of state." Consider, for instance, residency scores earned by the following student:

Independent; parents live out of state	.0600
Lived in state 5 years	.1500
Graduate of out-of-state high school; parents live out of state	.0050
Files own in-state tax return	.0675
Registered voter in state	.0375
Total Residency Score	.3200

If this were an undergraduate student transferring from a community college to an institution that used the sliding tuition scale, the student would be placed in tuition category 3. This means the student would pay 20 percent more tuition than students in category 2 and 50 percent more than students in category 1. This transfer student would be heavily penalized for his or her "legal status" and the locality of the high school from which he or she graduated, in spite of having lived in the state for 5 years.

Consider another hypothetical student. The effective weights would be the same as those in the example above, but this student is a long-time resident of the state who plans to enroll in the state college's professional school. Since he or she would be placed in category 3, he or she would be expected to pay $1,200 in tuition—hardly a "low tuition" for a long-time resident and taxpayer to pay at a state college. I am not so sure that "the citizens of any state . . . would react positively" to a model which imposes high tuition rates on long-term taxpayers whose parents happen to live out of state.

The model as presented seems to be geared toward the right-out-of-high-school graduate and, as such, does not recognize the new surge of part-time learners and transfer students.

Legal Analysis—Professor Vestal

This might be viewed as an attempt of objectify the school administrators' decision-making process. At the present time many schools have individuals who are making decisions about residency of students for tuition purposes. These decision makers are considering a number of different factors which they believe are relevant, including time in state, reason for presence and intention to remain, payment of taxes in state, registration of motor vehicle in state, driver's license in state, financial support by out-of-stater, marriage to resident source of support, voting within state, and ownership of residence within state or long-term lease. This model would limit the factors considered to legal status of student (dependent or emancipated; parents in or out of state), length of student's domicile in state, high school attended, tax status (files own return vs. dependent on parents; in-state or out-of-state return), and voter status (in-state or out-of-state voter or nonvoter).

The simplicity of the model makes it attractive. On the other hand, a decision is being made about residency, which is a legal question.

The sliding scale of penalties imposed because of low scores on the categorization is simply degrees of sanctions imposed for being non-residents of the state. The possibility of discriminating against a person who is, in truth, a resident of the state still exists, regardless of the degree of penalty imposed.

There may be a constitutional problem in permanently penalizing students because they graduated from an out-of-state high school, or because their parents live out of state. Such students could never get the full tuition remission no matter how many years they were actual residents of the state. An individual who feels that he is a resident of the state will be able to challenge the arrangement as applied to him, claiming lack of equal protection under the constitution. The nature of the review by the court will depend on the statute or common law device used. There may be a review *de novo* which means that the action of the administrator will carry no weight and the court will decide the legal question as if the administrator had not acted. On the other hand, there may be a provision that the administrator's decision is to be given certain weight. This problem should be considered if this model is to be given further consideration.

I do not understand why the weights assigned to the subcategories must add up to 1.00. It seems to me that subcategories could exist in infinite degrees. Certainly there is no reason to limit them to some numbers adding up to 1.00.

Apparently because of the restraint imposed in the model, Criterion C gives .40 to a graduate of an out-of-state high school whose parents or guardian live in state. This is the same as a graduate of an in-state high school whose parents are living in state. It seems to me that there should be a differential between these two categories.

Attention is also called to the fact that a student may file a tax return and at the same time be carried on a parent's return as a dependent. Criterion D does not provide for this possibility. Also in D, it seems appropriate to give more weight to a student who files an in-state tax return than to a student who is simply listed as a dependent on an in-state parent's return. Also I would give less weight to a student who affirmatively files a return in another state as opposed to a student who is simply carried as a dependent on an out-of-state return.

I recognize that these are simply technicalities which do not go to the essential worth or acceptability of the model itself.

The legal difficulty here is that an attempt is being made to categorize the concept of residency. A line is being drawn between a pure resident and all others. This must comport with the line which a court would draw. If it does not, then there is the possibility of litigation. Some student may claim the existence of discrimination not grounded on a rational basis and may win. One should not assume that all litigation will disappear if this scheme is adopted.

Among individuals who are categorized as something less than "pure" residents, there is provided different treatment. This also may be a source of litigation by individuals who feel that the categorization is not grounded on a rational base.

SLIDING SCALE (SINGLE CRITERION) MODEL

The tuition system outlined in this section is a much less elaborate variation of the multiple criteria model outlined earlier. It provides a five-step sliding scale of tuition assessment based on a single criterion—namely, the length of time a student (but not the student's parents or guardian) has resided in the state where he or she attends a public college or university.

The basic problems of inflexibility and subjectivity associated with traditional residency classification procedures have already been described. These points need not be cited again but they are all relevant as arguments supporting the less complicated tuition model presented here. This Sliding Scale (Single Criterion) Model eliminates the need for elaborate sets of residency regulations; it provides a sizable number of tuition classification categories; and it reduces the amount of administrative work required in determining appropriate tuition rates for all students. Finally, it is a more objective and equitable system than those currently in use since it greatly reduces the need for subjective administrative judgments in its application. Because of these characteristics, the single criterion model should help to reduce or eliminate legal problems that arise from student tuition classification cases.

Operational Aspects

The initial decision required of a governing board or legislature seeking to implement the single criterion model would be the elimination of all existing residency criteria. Thus, factors such as age, marital status, voter registration, payment of taxes, ownership of property, parental relationship, possession of automobile or driver's licenses, or declaration of intention to remain in the state would be held irrelevant to the classification of students for tuition assessment purposes. Instead, the appropriate authorities would establish for each level of instruction a five-step tuition scale which specifies a maximum and a minimum tuition rate for each instructional level. Students who had been physically present in the state for less than 1 year

would be required to pay the maximum rate for their level of instruction (lower division, graduate, professional, or whatever categories the board determined to be appropriate for a given institution or state system). Students who had been physically present in the state for 4 years or more would pay the minimum rate for their level of instruction. Intermediate tuition rates would be established for students who had been physically present in the state for from 1 to 2 years, from 2 to 3 years, and from 3 to 4 years. In this manner, students who typified the stereotype of "pure" nonresident would pay a high tuition rate while "pure" residents would pay a much lower rate. Since there would be three intermediate tuition levels, students who fall between these two extremes could be objectively sorted into appropriate tuition classes. This would eliminate the sometimes arbitrary classification of students demanded by traditional residency schemes.

The simplest way to implement this model would be to phase it in over a period of 4 years. All entering students—new freshmen, transfer students, and beginning graduate and professional students—would be placed in an appropriate tuition class at the time of initial matriculation, regardless of when this occurred (fall, winter, spring, or summer terms). After 1 calendar year had elapsed, each student would advance to the next lowest tuition class *provided*, of course, *that the student had maintained continuous physical presence in the state for the major portion of the elapsed time.*

Thus, a student who was a life-long resident of the state would begin his or her academic career at the lowest tuition class and remain at that level until completion of each level of instruction. On the other hand, a student newly arrived in the state in the fall, who remained in the state for the academic year *and* the following summer, for example, would begin at the highest tuition class and would not advance to a lower class until the opening of fall term 1 year later. This would be true regardless of whether the student was a new freshman, a transfer student, or a beginning graduate or professional student. Some transfer students will require special attention since they may be long-term residents of the state who went out of state to begin a college career and then returned to continue their studies at an in-state college. In such cases, the student would be given credit for the number of years of residency prior to going away to college and thus may be initially placed in a lower tuition class than a "pure" nonresident who transfers in at the same time. A similar situation would exist in the case of a long-term resident who went out of state to earn an initial degree but then returned to his or her home state for a graduate degree. In other words, a student would not relinquish a claim on a low tuition class merely because he or she attended college in another state. The assumption underlying this is that merely attending an out-of-state college does not carry with it the intention of renouncing citizenship in the home state. On the other hand, if a long-term resident moves to another state for more than 1 year to work and

thereby establishes residency in that state (i.e., becomes liable for the payment of taxes in that state and enjoys the benefits of citizenship there—voting, use of public facilities, etc.), all claim to preferred tuition classification in the original state would be lost. If such a person sought entry to a public college in the original state after being away for more than 1 year, he or she would be placed in the highest tuition class and would have to earn advancement to lower classes over time just as other nonresidents would be required to do.

Up to this point this single criterion tuition model has been described only in terms of its application to full-time students. It should be obvious, however, that part-time students could also be efficiently classified for tuition purposes in this manner. Part-time students could be assessed a fraction of the tuition rate at the appropriate level of instruction proportionate to the fraction of a full load of credit hours for which they are registered. The same general rule could apply to "special" students or "nondegree" students who may seek admission.

Earlier it was suggested that this new tuition classification scheme could be phased in over time by applying it to all "first-time" students. If that were done, all continuing students would remain under the previous system until graduation from their current degree programs. Thus, by the beginning of the fourth year after implementation of the new system, all students in the institution would be classified under the single criterion scheme. Clearly this is the least complicated of all the five tuition models outlined in this report. Despite its simplicity, it does not appear to lack the power to generate appropriate amounts of tuition income. Of course, the amount of tuition generated will be a function of the way students distribute among the five tuition classes at each level. The budget example given on the next page attempts to illustrate this for a hypothetical institution. The number of students in each class in this example had to be estimated and these estimates may or may not be realistic.

One promising feature of this model, however, is its potential for actually attracting larger numbers of nonresident students who would, initially at least, pay high tuition and thus generate more tuition income for the institution. Under this scheme, as mentioned earlier, all nonresidents have the opportunity to earn lower tuition classification without resorting to appeals of initial classification or other maneuvers designed to earn reclassification as a resident. This fact may be sufficiently appealing to prospective students from out of state to encourage their applications to an institution that has implemented the Sliding Scale (Single Criterion) Model.

Budgetary Aspects

As in preceding sections, this model will be applied to a hypothetical state college with an undergraduate population of 8,500 students, graduate enrollment of 1,300 students, and one small professional school that enrolls 200 students. The total enrollment is 10,000 full-time equivalent students and the annual budget is $14,090,000 for instruction and general purposes (exclusive of capital costs). The enrollments and per student expenditures for instructional purposes break down as follows:

Lower Division	5,000 students	$1,200 per FTE student
Upper Division	3,500 students	$1,500 per FTE student
Graduate	1,300 students	$1,800 per FTE student
Professional	200 students	$2,500 per FTE student

The governing board of the college sets the following minimum and maximum tuition limits for each level of instruction:

	Minimum	Maximum
Lower Division	$400	$1,300
Upper Division	$500	$1,500
Graduate	$600	$1,800
Professional	$800	$2,500

Based on this tuition structure, students newly arrived in the state would pay fees at exactly the full cost of instruction, with the exception of lower division nonresident students, who would pay slightly more than the total cost of instruction. Students who have lived in the state 4 or more years would pay one-third of their instructional costs and students with fewer years of residence to their credit would pay proportionately higher tuition charges.

If we can assume that the student population will be distributed by years of residence approximately as indicated in the following tables, this system should generate $6,044,500 in tuition income for a given year. The figures by level are as follows:

Lower Division

Residency	Students	Tuition	Income
4 years or more	3,500	$ 400	$1,400,000
3 to 4 years	900	500	450,000
2 to 3 years	100	700	70,000
1 to 2 years	150	1,000	150,000
less than 1 year	350	1,300	455,000
Total			$2,525,000

Upper Division

Residency	Students	Tuition	Income
4 years or more	2,450	$ 500	$1,225,000
3 to 4 years	630	600	378,000
2 to 3 years	70	800	56,000
1 to 2 years	105	1,100	115,500
less than 1 year	245	1,500	367,500
Total			$2,142,000

Graduate

Residency	Students	Tuition	Income
4 years or more	780	$ 600	$ 468,000
3 to 4 years	170	800	136,000
2 to 3 years	50	1,000	50,000
1 to 2 years	105	1,300	136,500
less than 1 year	195	1,800	351,000
Total			$1,141,500

Professional

Residency	Students	Tuition	Income
4 years or more	120	$ 800	$ 96,000
3 to 4 years	25	1,000	25,000
2 to 3 years	10	1,300	13,000
1 to 2 years	15	1,800	27,000
less than 1 year	30	2,500	75,000
Total			$ 236,000

Total Tuition Income

Lower Division	$2,525,000
Upper Division	2,142,000
Graduate	1,141,500
Professional	236,000
Total	$6,044,500

The state legislature is asked to provide a total of $13,500,000 in state support for the institution. Therefore, it is possible for the budget officer to project the following total budget for a given year:

Income		Allocations	
Tuition	$ 6,044,500	Instruction	$14,090,000
State appropriations	13,500,000	Administration	2,100,000
Federal funds	140,000	Physical plant	1,800,000
Overhead on grants	135,000	Student services	1,400,000
Gifts and endowments	32,000	Public service	500,000
Other sources	148,500	Other	110,000
Total	$20,000,000	Total	$20,000,000

Low Tuition

The two goals initially established to guide formation of models in this study are both satisfied by the Sliding Scale (Single Criterion) Model. Tuition is low for a majority of students; those with little or no claim to residency in the state pay tuition that is substantially higher than do students who have resided in the state for longer periods of time. In no case does a long-term resident pay more than one-third of the costs of instruction if tuition minimums are set according to the example given here. Furthermore, the practice of charging some students a fee so high that it tends to subsidize the education of other students is eliminated in all except one level of instruction. It would be possible to eliminate this practice completely but, of course, that would reduce somewhat the amount of tuition income the model would generate.

Further buttressing of the low tuition principle could be realized if the governing board or legislature in any state would set the tuition minimums at a figure below one-third of instructional costs and retain the maximum at full cost of instruction. While this might result in initially lower total tuition income, the appeal to out-of-state students would be increased and larger numbers of nonresidents would be likely to seek admission. This idea might be especially useful to those state institutions that have suffered substantial losses of nonresident enrollment in recent years and now have unused dormitory rooms and academic facilities.

Taxpayer Appeal

The obvious fairness of the single criterion model is a factor that would make it appealing to all citizens. Since it preserves the favored tuition status of students with long-term residency in the state, local taxpayers could be expected to accept the scheme without difficulty. It is true, however, that the model does provide some state subsidy to students originally from out of state who are in their second, third, or fourth years of attendance. These subsidies are initially modest and increase only after the former nonresident has made some contribution to the welfare of the host state through payment of taxes on any income earned while in attendance and payment of sales and other taxes, and by increasing the gross state product through expenditures of considerable sums in living and incidental costs.

Again, the equity argument can be used to justify this tuition system. Educational subsidies are granted in some rough relationship to the student's contribution to the state. While these are not proportional by any means, neither are they characterized by the gross inequities that mark the traditional method of assessing some students (e.g., nonresidents) a high tuition for the entire academic career.

COMMENTARY

Economic Analysis—Dr. Van Alstyne

The sliding scale, which embodies virtues in the *multiple* criterion model, embodies corresponding vices when transformed into a *single* criterion form. The criterion selected—students' presence in the state from a minimum of less than 1 year to a maximum of 4 years or more—has limited direct connection between what the parents and students have paid and will pay in taxes to support public higher education.

This tuition system, in which charges decrease with increasing years of enrollment, is likely to be the reverse of a system of charges based on relative costs of instruction which probably *increase* with increasing years of enrollment. It makes fundamental economic sense to relate basic charges to costs rather than to years of enrollment.

Again, it appears that in all cases it is preferable to conceive of the proposed systems of charges as two-part systems, one part relating to basic tuition and the other part to separate surcharges or remissions of fees. This permits educational program rationale and budgeting to respond more flexibly to different objectives and changing conditions. Also, this approach insulates the basic system of state finance of public education from disruption to solve less central issues.

I understand the other features of this model to be similar to the Sliding Scale (Multiple Criteria) Model and the comments made referring to the multiple criteria model are relevant to this model as well.

Educational Analysis—Professor Kauffman

In commenting on the multiple criterion model discussed earlier, I argued that it was too cumbersome and that some simplification of the sliding scale idea would be desirable. The degree of simplification introduced in the single criterion model, however, appears to be excessive. As drafted, the single criterion model seems to me to throw out the baby with the bath water.

Under this system, most nonresident students would benefit from a reduction in tuition whether or not they made a claim of permanent residence status after 1 year. This is true even though the model states that tuition reductions would be granted only to those students who "maintained continuous physical presence in the state for the major portion" of the

calendar year. Certainly a vast majority of students could meet that requirement, if in no other way, simply by attending summer school.

I would prefer to see a single criterion, such as length of residency, utilized to compute tuition for persons who *actually seek a change in residency status*. However, I fail to see the wisdom of dropping tuition in the almost automatic manner suggested. If that were done, it would undermine public support for keeping *resident* tuition at 25 or 30 percent of the actual cost of instruction and would tend to increase tuition for all students—residents as well as nonresidents. Taxpayers might ask: Why subsidize nonresidents at all?

Another point is open to question. This model would tend to reduce tuition each year, but at the same time the actual cost of instruction for these students would be increasing each year, or at least when the students move from lower division to upper division work. I fail to understand why one would want to do that.

Obviously this model would be easy to administer and would have great attractiveness to out-of-state students. Since it would clearly be advantageous for nonresident students to continue their studies—because their tuition would decrease—the plan would help to reduce attrition at the upperclass levels. That could be a significant factor in these days of declining enrollments and it adds to the appeal of the model. However, I think the model capitulates too easily in the face of a threat (i.e., possible loss of tuition income from nonresidents). While I may underestimate this threat, I think the model is based on an exaggerated view of it.

My major criticism of the model, however, is that it may lead to an erosion of the low tuition principle, and thus an erosion of the validity and equity of subsidizing permanent residents, because it ends up subsidizing all, or nearly all, students regardless of their residence status. By making it easier for nonresidents to get partial subsidy, this plan may prompt increases in tuition for everyone as institutions attempt to compensate for lost revenue. This pressure to increase tuition would be extremely unfortunate and, in the long run, bad for public higher education.

Political Analysis—Delegate Pesci

Of all the models presented, this one would probably attract the most legislative and gubernatorial attention because of its simplicity and its overall fairness. The model is not "hung up" on the length of time a student's *parents* or *guardians* have resided in the state where the student attends a public college or university. It also recognizes the new surge of part-time learners and transfer students.

There are, however, some things in the model that might cause people in state government to ask questions. For example, what is the definition of "continuous physical presence"? Who would define the term? Legislation might be necessary.

The importance of this definition is pointed out by the following example. A student from New York enters the University of Hawaii. Except for a brief absence during Christmas holidays, the student maintains continuous physical presence in Hawaii from September through May. In late May the student returns to New York and works there until late August. During that time the student lives with his parents and earns approximately $1,500. Next year the student will file federal and New York state income tax returns. During the summer, the student became 18, registered to vote in New York, and later requested an absentee ballot. At the end of the summer the student returned to Hawaii for his sophomore year. Hasn't the student remained a "pure" nonresident? Would he be entitled to advance to the "next lowest tuition class"? If so, on what grounds?

Another problem relates to the example of a long-term resident who moves to another state for more than 1 year to work and consequently establishes residency there. That person would lose "all" claim to preferred tuition classification if he sought admission to a public college in his former state after being away more than 1 year. He would be considered a "pure" nonresident under this model. It seems to me that this position needs to be reconsidered in the name of justice.

Legal Analysis—Professor Vestal

This seems obviously to be an attempt to get away from the problems of residency and classification. I think the courts might well view this as an attempt to get around the law, and strike it down as unconstitutional.

If one compares a person who has been in the state for a number of years with a student who comes into the state for the purpose of going to school, the legal ramifications become apparent. During the first year, the student who has been in the state is preferred over the newly arrived student. This may be permissible under *Starns* v. *Malkerson*, 326 F.Supp. 234, aff'd 91 S.Ct. (1971). During the second year, again, the student who has been in the state is preferred over the student who has been there for a single year. This is true even though the latter has every intention of becoming a resident of the state and has done all of the things which indicate this intent. Although it is difficult to decide precisely what the Supreme Court stated in *Vlandis* v. *Kline*, 93 S.Ct. 2230 (1973), it seems reasonable to conclude that the court was willing to strike down a provision which discriminated against students

on the basis of a condition which existed at the commencement of the educational experience. The court indicated that there must be a possibility of a change in condition which would alter the status of the student vis-a-vis tuition charges. There must be a possibility that a student coming in from out of state can qualify for equal treatment with in-state students within a reasonable period of time. The 4-year period of time under this model would seem to be too long. Anything beyond the 1-year provision of the *Starns* case would seem to be highly questionable.

There is another feature of this model which is not essential to the scheme but which seems to be troublesome. That is the provision that an in-state person could go out of state for 4 years and then return and be considered a person entitled to the lowest tuition rate, while an in-state person who leaves the state for a period of more than 1 year to work outside the state will be considered an out-of-stater for tuition purposes. This distinction, which seems so logical to educators, does not have much appeal to other individuals and certainly would be challenged in the courts. I am not sure that this is a reasonable classification and think that it might be struck down under the equal protection clause of the United States Constitution.

When this model is offered as a method of circumventing the difficulties of residency classification, a court would consider it suspect. I think that under the recent decisions, this scheme, as it affects individuals who have been in the state for more than 1 year, bars the possibility of equal treatment. This scheme could be viewed as including a conclusive presumption that the newly arrived individual cannot become a resident of the state until the lapse of 4 years. It seems to me that this scheme would fall under *Vlandis* v. *Kline*, 93 S.Ct. 2230 (1973).

Residency is a concept which has a fixed legal meaning. A court can decide whether an individual is a resident of a state. The courts will not allow a state to substitute this durational test for the more sophisticated multi-faceted residency test which has been developed.

Reaction—Robert Carbone

Both Dr. Van Alstyne and Professor Kauffman question the advisability of a tuition system that permits annual reductions in total student charges when costs of instruction tend to increase in subsequent years of study. The point deserves some reaction.

It is important to keep in mind the fact that this model includes a *tuition-by-levels* arrangement that provides for substantial increases in tuition from lower division to upper division and from upper division to graduate and professional level studies. Therefore, even though a student may qualify for a lower tuition rate following each year of study—if he or she meets the

requirement of "continuous physical presence"—the higher scale would tend to modulate the effect of this tuition reduction. The following example illustrates this point:

1. *Student A* is a "pure" nonresident during his freshman year. He pays $1,300 in tuition that year; $1,000 in the second year; $800 in the third year; and $600 as a senior—total tuition of $3,700.
2. *Student B* is a lifelong resident. She pays $400 tuition in each of the first and second years and $500 tuition in each of the third and fourth years—total tuition of $1,800.
3. *Instructional costs* were $5,400 per student for the 4 years of study. Thus the student who was originally a "pure" nonresident received a subsidy of $1,700 in 4 years while the lifelong resident received a subsidy of $3,600 in 4 years.

Clearly this scheme tends to preserve some measure of differential tuition between "pure" residents and those who earn residency over the period of time they are enrolled as students. Of course, it can be argued (as Dr. Van Alstyne suggests) that the differential does not, in economic terms, fairly represent each student's respective contribution to the state tax structure. Yet the plan is clearly more equitable in this sense than existing tuition systems under which the nonresident might easily qualify for the lowest rate after only 1 year in the state. If that happened, the migrating student would pay only $2,700 in tuition over 4 years and realize a subsidy of $2,700.

In his commentary, Delegate Pesci asks whether the hypothetical student he creates would advance to the next lowest tuition level after his freshman year at the University of Hawaii. Clearly the answer is "no," since the student maintained physical presence in the state only from September through May, and all other indications are that he is a resident of New York. The example, while not a difficult one to deal with, does help emphasize the point that under this model students would have to remain in the state where they attend college throughout the academic year *and* the summer months as well, exclusive of brief periods out of state similar to the normal vacations taken by long-term residents. Going back home to work for the summer would preclude the student from claiming a lower tuition rate the following year.

Finally, Professor Vestal suggests that the courts might interpret this model as an attempt to circumvent the difficulties of residency classification. One can only hope that future judges, should they be confronted with the issue, would agree that there is a "compelling state interest" in devising a tuition scheme that distributes educational subsidies somewhat in proportion to the total contribution that the student (or his or her parents) has made to the state's welfare and economy.

NATIONAL TUITION BANK MODEL

The dramatic increase in the cost of attaining a college degree, especially for nonresident students, has inhibited interstate migration of students to our public colleges and universities. Students from middle and lower income families find it difficult or impossible to pay the high differential fees that have reached as much as $1,600 beyond basic tuition in some institutions. Enrollment in some public colleges, especially those located near state borders, has dropped, contributing to the under-utilization of many yet-to-be-amortized facilities. The tuition model presented here suggests a method of removing this major economic barrier to student migration. It eliminates high tuition differentials assessed nonresidents by providing a method through which all states could subsidize the higher education of their residents attending public institutions in other states.

The model is based on establishment of a national tuition "bank," a quasi-public corporation to administer a balance-of-tuition payments among states resulting from the inmigration and outmigration of students to public colleges and universities. To be known as the Corporation for Balance of Tuition Payments (CBTP), the organization would serve as the mechanism through which states could channel cost-of-education subsidies to public institutions in other states. As will be explained, this scheme would enhance interstate cooperation in higher education without compromising the prerogatives of any institution or state to set admission standards, determine tuition levels, or construct institutional budgets. The plan would assist all states in more equitably discharging their responsibilities for providing access to higher education to all qualified residents—not only those who currently seek admission to an in-state college or university.

Two methods of creating the Corporation are immediately obvious. Congress could enact appropriate legislation establishing CBTP as a quasi-legal entity similar to the Tennessee Valley Authority, the Corporation for Public Broadcasting, the Federal Reserve Bank System, or the Federal Deposit Insurance Corporation. Such action would also permit the federal government to make a contribution to interstate cooperation in education

by underwriting the operational costs of CBTP. Indeed, the Congress may be prevailed upon to recognize more fully the national character of higher education by providing substantial appropriations to s imulate interstate migration of students. If federal dollars would pay half the needed subsidy for each out-of-state student, much of the anticipated resistance to this revolutionary idea, especially from states that export large numbers of college students, would be ameliorated. In any case, substantial federal support would be required to initiate this balance of payments scheme since it would take time for some states to phase in this additional higher education subsidy program. States that have traditionally exported large numbers of students would be particularly hard pressed and should be assisted in gradually assuming this new responsibility for providing educational opportunity for their citizens. A 5-year development period with initially heavy but gradually decreasing federal contributions would serve to inaugurate the proposed nonresident student subsidy scheme.

An alternative to federal creation of the Corporation would involve an interstate compact designed to provide the necessary clearinghouse functions. It is possible that the Education Commission of the States, already numbering 46 jurisdictions among its members, would serve this purpose. Even under this arrangement, federal funds for operating CBTP could be sought. Perhaps such funds in combination with state dues, in the form of user fees, plus foundation grants would provide long-range funding of the operation. In any case, the costs of operating CBTP would not be great since its major function would be relatively simple bookkeeping responsibilities.

Operational Aspects

Students from a given state seeking admission to a public college or university in another state would apply to that institution in the traditional manner. The institution, or the system of higher education to which the institution belongs, would retain its right to determine admission standards and to apply them in each admissions case. In like manner, each institution or system would continue to ascertain its own curricular offerings and its own internal budgets. The existence of CBTP would in no way influence the governance and management of any institution or determine educational policy in any member state.

Following admission of a nonresident student, and in each succeeding year of attendance, the institution would verify the student's matriculation and state of origin by depositing a credit with CBTP for an educational subsidy. The amount of this subsidy would be equal to the annual average state appropriation that the institution receives for each resident student enrolled. In other words, the institution would ask the nonresident student's home state for an educational subsidy equal to the subsidy enjoyed by in-

state students. (Examples of the way this subsidy would be calculated appear later in this section.) This technique for calculating the level of subsidy is based on an idea pioneered by Bowling Green State University, which determines the amount of tuition differential to be assessed nonresident students in the following manner. The state of Ohio appropriates funds for each public institution based on the number of full-time equivalent undergraduate students who are residents plus all full-time equivalent graduate students, including nonresidents. Fiscal officers at Bowling Green simply divide the annual legislative appropriations for the institution's operating budget by the average enrollments, as indicated above, to determine the average per student appropriation. This figure, if it is not greater than the maximum nonresident fee authorized by the state, becomes the differential tuition that nonresidents must pay in addition to basic tuition paid by resident students.

It should be clearly understood that the technique suggested here would be based entirely on operating budgets—that is, appropriations granted to support instruction and general operation of any institution. Capital costs would be specifically excluded from the determination of annual education subsidy for nonresident students, because no simple or reliable technique exists for prorating capital costs per student on an annual basis. Furthermore, it is not unrealistic to expect the receiving state to provide sufficient academic facilities to accommodate both resident and nonresident students. After all, states receive some economic, social, and cultural benefits from nonresident students, and therefore providing academic facilities is a reasonable and justifiable state expenditure.

Only the 4-year public colleges and universities in this country would be covered under CBTP. This would limit the institutions involved to approximately 465, the number of member institutions in the National Association of State Universities and Land-Grant Colleges and the American Association of State Colleges and Universities. Public 2-year colleges need not be included since they normally do not enroll large numbers of students from outside their local jurisdictions. Those few that do have established reciprocal or "charge back" arrangements with neighboring jurisdictions. Consequently, CBTP would need to establish accounts for only the 465 institutions and maintain working relations with 55 funding sources (each state plus Washington, D.C., and U.S. Territories).

The credit deposited with CBTP by the institution would indicate the amount of subsidy to be added to that institution's account. In this manner, each institution would be building a total state credit while at the same time institutions in other states would be depositing debits against the total state account. Once a year, CBTP would ascertain the creditor and debtor states, submit bills to the appropriate state agency, and subsequently issue drafts to each institution as appropriate. Determination of a state's balance would

be based on fall enrollments, and payments from CBTP could be made early enough in the academic year to enable institutions to utilize these funds before close of the current fiscal year. If the number of nonresidents enrolled in subsequent terms of a given year increased, the institutions would have to absorb the cost. Similarly, if some nonresidents withdrew before completing a year's study, the sending state would still be liable for a full year's subsidy. It is hoped these minor differences would even out state by state over time. This would make multiple calculations and billings each year unnecessary and thus generally simplify the bookkeeping chores of CBTP.

Each state would need to appropriate funds for each year to cover bills from the tuition bank. Such funds could be added to the budget of an existing state agency, normally one with some statewide higher education responsibilities (e.g., a statewide system of higher education, a state scholarship commission, or a coordinating agency). The funds would have to be earmarked for CBTP payments. Thus, no new agency would need to be created, and all appropriated funds would be subject to the usual legislative review and oversight. Funds would flow from the state agency to CBTP and subsequently to institutions in other states that have accepted students from sending states. It is important to note that funds would flow *to institutions*, much in the same manner as do foundation grants and income from sources other than the treasury of the state in which the institution is located. If CBTP funds were placed in the general state budget there would be the danger that they would not reach institutional budgets. This would result in serious loss of income by the institutions since, under this scheme, nonresidents would no longer pay directly the higher differential tuitions they currently pay. Failure of the CBTP money to reach institutional budgets would result in virtual bankruptcy for public institutions.

It would be necessary to predict the level of appropriations required from each state prior to initiation of the CBTP plan. This could be accomplished by a simulation of interstate migration of students to public colleges using enrollment and tuition data from the year preceding initiation of the balance of payments arrangement. Institutions could calculate the educational subsidy required and report current enrollments. The simulation would yield an approximate balance for each state; by adding an anticipated inflationary increase, a relatively accurate prediction of the funds needed for the first year of CBTP operation could be made. As the scheme progressed over time, experience would guide states in this regard. Some contingency funds, perhaps provided by federal appropriations, could be held by CBTP to cover situations when state appropriations were not adequate to cover the amount owed by that state. The deficit could be then added to the next year's appropriation voted by the state's legislature.

Encouraging Participation

Without doubt, active participation of all or nearly all states is a necessary element in the development of a national tuition "bank" as suggested in this model. It is obvious that some states—specifically those that have not provided sufficient student places in their own public colleges—will see this plan as a costly endeavor. Some attention to this point is warranted.

It is assumed that importer states, those that have traditionally welcomed large numbers of nonresident students, will see advantages in a tuition system that will subsidize the out-of-state students they accept. For one thing, the plan, if implemented, would stimulate greater interstate mobility of students and help many institutions recover from recent enrollment declines. Dormitory rooms, originally intended to house many nonresidents, will again be filled, and the institutions will be better able to amortize these facilities. The stimulating influence of students from other regions will be enhanced on many campuses. The recent struggles of students against institutions over residency classification will be diminished or eliminated.

On the other hand, exporter states will be faced with added fiscal demands since they will be asked to provide support for students who they do not now subsidize. How will these states be encouraged to participate in the national Corporation for Balance of Tuition Payments? While there may be several answers to this question, one obvious answer presents itself.

Institutions in states that participate in the Corporation must make admission of nonresident students contingent upon participation in the program by the home states of those students. In other words, states that are unwilling to pledge educational subsidies for migrating students will find that their citizens will no longer be welcomed by institutions in other states. After all, there is no law or legal decision in this country that compels institutions to accept nonresidents. If students from nonparticipating states are systematically excluded from public colleges in other states, the consequences of limited access for these students will be dramatically portrayed.

In such states, students will quickly point out the lack of public educational opportunities. The legislature and governors will be faced with three alternatives—build more colleges at enormous cost, participate in the national program at a more reasonable cost, or explain to the general public why their sons and daughters don't have access to a low cost public college or university. Admittedly, this is a harsh set of realities for any state to face but the situation may be necessary if the national program is to work effectively.

Only one ameliorating possibility—perhaps as a transitional measure—is suggested. It may be that CBTP or the institution would be able to accept an annual educational subsidy directly from the student or his or her parents if the student is a resident of a nonparticipating state. This would maintain some opportunity for interstate mobility but, of course, would favor only those students with the ability and willingness to pay the subsidy. This possibility is seen as clearly less desirable than full state participation in the national program.

Low Tuition

The influence of this model on tuition levels for nonresident students is obvious since the differential between basic instructional fees and the higher nonresident rates would be eliminated. The sometimes not so subtle upward tug of higher nonresident fees upon basic instructional fees would also be eliminated. This would tend to restrain proponents of higher instructional fees who argue that resident students can afford higher tuition since nonresidents seem to be able to find the needed funds.

There is yet another important positive influence inherent in the balance of tuition payments idea. As mentioned earlier, subsidies paid by a sending state should be equal to subsidies appropriated by the receiving state for its own students. In recent years there has been some tendency for institutions to compensate for stable or diminishing appropriations by dramatically increasing the nonresident differential. Under the CBTP model, this could not happen unless the per student appropriation for resident students was increased first. The temptation to subsidize resident students through higher nonresident fees would vanish and the net effect would be a lid on all tuition that would be harder to raise.

Given the real or imagined taxpayer disenchantment with public higher education, a slowdown in the tuition spiral should be greeted with general approval by the citizenry of any state. It is obvious that parents of students who attend out-of-state public institutions would find the CBTP plan to their liking. It would mean that the added cost of sending their children to college would be spread over the general taxpaying population of their state—in effect, the added tax they pay for higher education would be greatly reduced. Furthermore, taxpayers in the receiving state would no longer have to worry about the real or imagined fear that their tax dollars were being used to provide educational subsidies to nonresident students. They would, of course, still be subsidizing capital costs for their public institutions, some of which would naturally contribute to the education of out-of-state students. The fact notwithstanding, implementing CBTP can be seen as a factor in generally improving taxpayer attitudes about public higher education within a state.

Clearly the most dramatic result of implementing this model would be a substantial increase in state fundings for public higher education on a nationwide basis. This would happen, of course, only if legislatures maintained the historical trend of increments (however slight in some states) in existing institutional budgets and in addition voted funds to cover subsidies for students going out of state. On the other hand, if funds for CBTP were simply deducted from the normal allocations for higher education in the state, all public colleges and universities would be seriously hurt. This unfortunate turn of events, if it did occur, would not be warmly received by the general public in any state since it would mean a definite reduction in educational quality and opportunity for residents of that state. Legislatures tempted to take such action would be well advised to recall that, for all the outcry about public higher education, Americans still tend to place high value upon college attendance and they exhibit generally favorable attitudes toward higher education as an institution of society. A national poll in 1973 clearly revealed that public approval of education was near the top of the scale when compared with most other social institutions, including Congress and the administrative branch of federal government.

The assumptions underlying this reasoning are open to argument, but fortunately the forces favoring increased state support of higher education do not rest entirely upon this admittedly debatable premise. It should also be recalled that there is a general movement in our society toward preparation for gainful employment through study beyond high school. While this has resulted in a larger proportion of new students selecting vocational schools and other noncollegiate training programs, the spin-off from this movement favors public colleges and universities also. After all, such institutions are more likely to offer programs that culminate in a credential or marketable talent than are private collegiate institutions which concentrate on traditional liberal arts courses.

Finally, states are now in a better position to increase their support of public higher education, even in the face of heavy demands for other social services. A great many states show a substantial annual revenue surplus that could be turned to this use. Resulting partially from revenue sharing, these surpluses could well grow as more progressive tax structures evolve. Public concern for good and accessible education—traditionally a basic attitude during times of recession or depression—would be a powerful force in reordering state (and national) priorities in the direction of more tax money for the education of all citizens.

Determining Residency

The problem of residency determination, with all its legal and administrative pitfalls, would be greatly simplified and partially eliminated under the balance of tuition payments model. The student's legal residence at time of

initial matriculation in a public college or university determines which state pays the educational subsidy. Since all students—whether residents or nonresidents—pay the same instructional fees under this plan, it would be largely irrelevant to the student which state provided this support. That being the case, there would be no particular reason for a nonresident student to seek reclassification as a resident. However, some reclassification mechanism would be necessary since a small number of students may want to establish residency in the state where they attend college.

A residency determination would be made when the student initially enters the institution as a freshman or transfer student. This would apply to part-time as well as full-time students, regardless of whether they were undergraduate, graduate, or professional students. As was pointed out in the discussion of a model earlier in this report, determination at time of entrance is normally uncomplicated by mitigating circumstances. Therefore, two categories of students could be determined.

Dependent student—if the person(s) upon whom the student is dependent has not maintained a legal residency within the state for 12 consecutive months immediately prior to initial matriculation in a degree program, the state where such residence was maintained is liable for an appropriate educational subsidy for that student.

Independent student—if the student is a financially independent adult or emancipated minor who has not maintained a legal residency within the state for 12 consecutive months immediately prior to initial matriculation in a degree program, the state where such residence was maintained is liable for an appropriate educational subsidy for that student.

For these purposes, legal residence within the state could be defined simply as—

1. being physically present in the state for the durational period except for short periods of temporary absence;

2. establishing a domicile in the state which is the person's true and permanent place of habitation, in which the person intends to remain, and to which the person intends to return following temporary absence;

3. filing income tax returns which show an in-state permanent address and which report in-state tax liability for all income earned during the previous year.

Again, as in the surcharge model reported earlier, all other artifacts of citizenship would be ignored in residency determination.

Budgetary Aspects

It is interesting to note how the CBTP model looks when described in terms of a hypothetical institutional budget. Using the same example as before, the reader is asked to imagine a general purpose state college or university that enrolls 10,000 full-time equivalent students. Again, it is largely undergraduate but has a small graduate school and one professional school. The vital statistics are:

Lower Division—5,000 students, including 4,250 residents; 750 nonresidents

Upper Division—3,500 students, including 2,975 residents; 525 nonresidents

Graduate—1,300 students, including 1,040 residents; 260 nonresidents

Professional—200 students, including 140 residents; 60 nonresidents

Two examples will be given to illustrate how different subsidies could result from a variation in the technique of using enrollment and appropriations to calculate per student support.

Example A

For a given year the institution received a legislative appropriation of $13,300,000 to cover instruction and general operations, but exclusive of capital improvements. The institution's budget committee determined that it would allocate these funds for the education of *each resident student* as follows: Lower Division—$1,350; Upper Division—$1,700; Graduate—$2,000; Professional—$3,035. This would yield the following expenditures:

Lower Division	— 4,250 students X $1,350 =	$ 5,737,500
Upper Division	— 2,975 students X $1,700 =	5,057,500
Graduate	— 1,040 students X $2,000 =	2,080,000
Professional	— 140 students X $3,035 =	425,000*
	Total state appropriation	$13,300,000

*rounded slightly

Next, an equal educational subsidy for *nonresident students* would be calculated and credits for this amount submitted with CBTP, as follows:

Lower Division —	750 students X $1,350 =	$1,012,500
Upper Division —	525 students X $1,700 =	892,500
Graduate —	260 students X $2,000 =	520,000
Professional —	60 students X $3,035 =	182,100
	Total from CBTP	$2,607,100

Thus the total institutional budget for the fiscal year would look something like this:

Income		Allocations	
Tuition	$ 3,692,000	Instruction	$14,100,000
State appropriations	13,300,000	Administration	2,100,000
CBTP	2,607,100	Physical plant	1,800,000
Federal funds	140,000	Student services	1,400,000
Overhead on grants	135,000	Public service	500,000
Gifts and endowments	22,900	Other	100,000
Other sources	103,000	Total	$20,000,000
Total	$20,000,000		

To balance this budget the institution would need to recover a total of $3,692,000 in tuition. Therefore, it can set the following tuition rates for all students, by level, regardless of residency status:

Lower Division	— $325 per year X 5,000 students =	$1,625,000
Upper Division	— $350 per year X 3,500 students =	1,225,000
Graduate	— $550 per year X 1,300 students =	715,000
Professional	— $635 per year X 200 students =	127,000
	Total	$3,692,000

Example B

In this example, there is a slightly different set of circumstances. The legislature makes a lump sum appropriation of $12,250,000 and directs the institution to allocate it according to the following formula: Lower Division—1.0; Upper Division—1.5; Graduate and Professional—3.0. The institution ascertains that this would provide the following subsidies for *resident students:*

Lower Division	— 4,250 students	X $1,000	=	$4,250,000
Upper Division	— 2,975 students	X 1,500	=	4,460,000 (rounded slightly)
Grad./Prof.	— 1,180 students	X 3,000	=	3,540,000
		Total		$12,250,000

In preparing its credit billing to CBTP, the institution calculated the subsidy requested for *nonresident students* as follows:

Lower Division	—	750 students	X	$1,000	=	$ 750,000
Upper Division	—	525 students	X	1,500	=	787,500
Grad./Prof.	—	320 students	X	3,000	=	960,000
				Total		$2,497,500

The total institutional budget would be:

Income		Allocations	
Tuition	$ 4,725,000	Instruction	$14,100,000
State appropriations	12,250,000	Administration	2,100,000
CBTP	2,497,500	Physical plant	1,800,000
Federal funds	180,000	Student services	1,400,000
Overhead on grants	175,000	Public service	500,000
Gifts and endowments	29,500	Other	100,000
Other sources	143,000	Total	$20,000,000
Total	$20,000,000		

To balance this budget the institution would need to recover a total of $4,725,000 in tuition payments. Therefore, it could set the following tuition levels for all students, regardless of residency status:

Lower Division	—	$400 per year	X	5,000 students	=	$2,000,000
Upper Division	—	$500 per year	X	3,500 students	=	1,750,000
Grad./Prof.	—	$650 per year	X	1,500 students	=	975,000
				Total		$4,725,000

In each of the two examples above, it is possible to balance the budget with a relatively low direct tuition charge to students. This is one characteristic established at the outset of this report as desirable in the models reported here. Since there is no direct differential fee for nonresident students, the model does not continue this traditional practice of public institutions. However, there is no loss of income to the institutions as a result, since the nonresident student's state of origin provides an educational subsidy in lieu of the differential fee. For all practical purposes, then, the effect of a differential fee remains, but the burden of this fee is shifted away from the nonresident student.

COMMENTARY

Economic Analysis—Dr. Van Alstyne

Question: Does the model suggest a realistic balance between individual and state contribution toward cost of education?

This is the most innovative approach and constitutes the sharpest departure from existing arrangements. The unique features of this model do not, however, relate to the pricing of education but rather to the payment mechanism. Thus, whether the balance between individual and state contributions is "realistic" depends on specification of the model with respect to pricing and determination of payment status of students for each of the 50 states.

We can anticipate sticky political and operational problems in a clearinghouse operation because state institutions have widely differing educational costs. They set tuition at different proportions of costs and this results in widely differing educational subsidies to students. In implementing this model, the designers would face a dilemma of either accommodating it to these widely differing costs and prices, or pressuring for more standardization; both alternatives are likely to be politically very unattractive.

Question: What is the effect of the model on long-range support for public institutions?

It is difficult to judge whether the "bank" would be funded in each state with an increment in the budget for support of higher education or with a decrement from existing levels. If states are going to increase their higher education budgets, even out of revenue sharing funds made available to them or out of surpluses resulting from growth of revenues produced by progressive tax structures as income increases, one might easily imagine that the states would prefer to invest in educational capacity within their own borders. If states do not increase their educational budgets, then institutional budgets would be threatened and the portable funds could be carried to other states by out-migrants without the assurance of offsetting gains from in-migrants. Thus the effect of the bank on long-range support for public institutions might "depend."

One might contemplate circumstances in which the operation of the national tuition bank might have adverse effects on state educational systems trying to improve. The migration of students is stimulated to a large extent because of differences among state institutions in the price-quality relationships. A state with low quality higher education would have a substantial continuing brain drain and outflow of funds to other states with

higher quality education. From a national standpoint, it is possible that investment in the tuition bank to stimulate student migration might operate in a way which would be adverse to one important national interest; namely, reducing the quality differential among the state systems of higher education by increasing the quality of poorer institutions.

Question: What effect will the model have on institutional budgets, especially on initial implementation?

Payments to institutions are not direct from the students but are once removed, from the corporation. Delays, if any, in receiving funds from the clearinghouse could have adverse impacts on institutional cash flows. The effects of the plan on institutional budgets will depend on whether the institutions are in states with net in-migration or net out-migration, and on whether states add to current budgets or subtract from them to cover net costs of the system.

Question: Will implementation of the model in public institutions in a state have any effect on private or proprietary institutions?

Implementation of the national tuition bank might induce enrollment shifts from in-state and out-of-state private institutions to high quality, low cost out-of-state public institutions for high income students. There would be no impact on proprietary institutions. It should open up opportunities to migrate for middle and lower income students which they did not have before.

The bank is not likely to increase total enrollment nationally but merely to facilitate migration of students already intending to enroll.

Question: What influence might this model have on interstate migration of students to public (or private) institutions?

This model is intended to eliminate high tuition differentials assessed nonresident students and to remove this major economic barrier to student migration. If the national tuition "bank" were actually operational, it would be likely to have some of the intended effects. It is difficult to make quantitative estimates of what the actual impact would be, initially and over time, without a better understanding of the full range of barriers and facilitators to student migration, placing a relative weight on reduction of surcharges as compared with the levels of tuitions themselves, transportation costs, need to live at home, desire to live away from home, differences in institutional image and real quality between in-state and out-of-state institutions, residency requirements for state professional certification, and so forth.

It should be noted that migration of students is substantial and that the regional patterns persist over time, resulting in heavy net inflows and outflows for particular states. The model as presented rests on a presumption that the exporting states will not be reluctant to finance large outflows of their own students. Based on my admittedly narrow experience of seeing the strong local opposition to a labor mobility project for unskilled workers funded entirely by the federal government, as a demonstration project, federal financing of this migration will sweeten this proposal only to a limited extent.

Question: In what ways will the model influence (or be influenced by) current proposals for funding higher education (Carnegie, CED, etc.)?

The National Tuition Bank Model is a new approach to a problem on which the recent major studies of financing postsecondary education did not focus.

Question: How realistic is the model in light of historical trends and future projections for the funding of higher education?

The history of success of innovative proposals over the years to create new national vehicles to facilitate financing postsecondary education has not been startling, with the single exception of the Student Loan Marketing Association. I would imagine healthier efforts to reform and align the existing state-by-state mechanisms should be made before investing substantial efforts in creating a new vehicle with its own set of problems.

Question: Does the model contribute to the equity and/or efficiency of distribution of education subsidies in public higher education?

Administrative efficiency? This may be a trivial question, but how would you handle credits for the state for mid-year attrition of students at out-of-state institutions who have collected fees from the bank? One might imagine a comical surge in out-of-state recruiting. Setting the educational subsidy to be transferred on behalf of migrating students equal to the subsidy for students in the home state is reasonable and equitable. As proposed, these educational subsidies include only current operating support. Although it has never been pressed politically, it is hard to maintain conceptually that the subsidies to be reimbursed should not include a prorated contribution to the capital costs of education as well, even given the difficulty of measuring this on an annual, per student basis.

Why should the model be limited only to 4-year institutions? Students may claim that this inappropriately restricts their choices, although on the other hand, the very rationale for establishing the 2-year community colleges has often been to broaden access by providing local accessibility.

Educational Analysis—Professor Kauffman

There is no question as to the favorable reaction most students would have to this model. It would open the doors to a wide variety of alternatives for students (and their parents) in selecting a college and it would certainly stimulate interstate migration. Philosophically, then, I find this model to be attractive.

There are, however, problems related to this model that deserve to be identified. First of all, the premise or assumption underlying the plan is based on the situation that existed a decade ago—a *rising* enrollment picture which forced states to build new campuses and expand old ones. In such a situation, an argument could be made for spending some money to send residents elsewhere for the same, or less, cost than it would take to expand state campuses. It is likely, given the present enrollment situation, that a state legislature would refuse to subsidize a resident student who wishes to study out of state as long as there are empty dormitories and classrooms at in-state colleges and universities. Why, for example, should Pennsylvania subsidize a student who wants to attend a University of Wisconsin campus if there are empty places at Kutztown?

With the stabilization of enrollments, we will probably see greater emphasis on state planning for postsecondary education. One result of such planning could be a diminution of student free choice of where to attend. In a completely "student driven" system of higher education, the model would make sense. In a state-planned system, there would be resistance to spending money for students to go elsewhere unless there were no student places in any of the state's institutions. One would have to develop a rationale for student freedom of choice to justify the model in this steady-state time.

A second problem grows out of the notion of "credits" and "debits." This would work to the disadvantage of those states that do not have attractive state institutions to which students would be drawn. My impression is that interstate migration is not spread uniformly. Thus, some states would pile up credits while others would pile up debits. On the other hand, there is an element of healthy competition involved. Some institutions would gain status from displaying their drawing power; others would be motivated to improve their drawing power. If the national bank were in effect, one could argue that improved quality of programs would be reflected in increasing numbers of nonresident students. This might help those institutions trapped in FTE formula funding to justify requests for program improvement funds.

Restricting such subsidies to citizens who choose to attend only public institutions presents a third problem. Once you made the case for the subsidy, there would be great pressure to make it applicable to both public and private institutions. For example, would it be politically feasible to say that a person from New Jersey attending the University of New Hampshire would receive a tuition subsidy, but if he transfers to Dartmouth he is on his own? Furthermore, would not such a subsidy be applicable to private institutions *within* the state as well? For many years the case for state aid to private higher education has been based on the argument that it would be less costly to utilize fully the private sector rather than expand the public sector. It would be very difficult to develop a rationale for restricting the subsidy to public institutions only, especially now that enrollments are stabilizing or declining. One of the most attractive public policy arguments these days is the "voucher" or "free-market" concept, in which aid is given directly to students and they use it where they wish—in public or private institutions, within the state or out of state. Considering the number of people who advocate this idea, I think it would be difficult to make private colleges "off limits" under the national bank system outlined in this model.

The "accountability" question is still another problem. Once agreement between states was accomplished, they would want to know what they were getting for their money and, if tuition rates were raised by other states, they would want to know why. The national bank would have to monitor costs and programs, compare and justify cost differentials, etc., in order to satisfy legislatures that were being asked to appropriate increasing amounts of money to subsidize migrating students. If a receiving state had to raise tuition, and thus other states would have to increase the amount of subsidy provided, the receiving state would have to justify the necessity of its tuition increase. Costs and the basis of costs would have to be shared among states.

Finally, the description of the model identifies a serious problem—legislatures deducting the subsidy dollars from the total appropriations for in-state institutions. In this regard, it might be helpful to develop some kind of base formula with which it would be possible to monitor the effects of stimulating student mobility and guard against in-state institutions being unfairly penalized as a result of increased state expenditures for subsidies to migrating students.

All in all, I think this national tuition bank idea is a worthwhile effort, especially if the federal government would support its trial. Yet, one must be cautious about the premise. The declining enrollment picture may not make this attractive to many states.

Political Analysis—Delegate Pesci

Creation of a quasi-legal corporation to balance tuition payments should be looked upon favorably in general by legislators and governors, particularly if Congress is prevailed upon to authorize half of the needed subsidy from federal dollars. That might eliminate some of the problems of encouraging general participation of exporter states.

Because of their past experience with ECS, SREB, WICHE, etc., states would probably accept the alternative of an interstate compact with ECS as the clearinghouse. I might suggest that some thought be given to a regional pilot project being attempted first before a total national commitment is made. It is possible that one of the regional organizations could serve this purpose with federal support.

There may be concern that the model limits the cost-of-education subsidies to *public, 4-year colleges.* Many legislators and governors apparently feel that private colleges and universities *do* deserve the public interest—witness the number of states which have developed a public policy of state aid to private, nonprofit postsecondary institutions. In addition, a survey I conducted in 1973 for the Association of Governing Boards of Colleges and Universities revealed that there are approximately 150 state legislators who serve on boards of trustees of postsecondary (primarily private) institutions in their states. You might expect these state legislators to react unfavorably to a proposal for providing subsidies to residents attending out-of-state public colleges, and perhaps to prefer that such funds go to support in-state nonpublic institutions.

From an admissions viewpoint, this model may be looked upon as an elitist program. Only those students who can gain admittance to an out-of-state institution will benefit from this model. A black student who gains admittance to his local community college only because of its open-door policy cannot expect benefits from attending a college in another state, except as a transfer student. Critics of this model might label it too institution-oriented rather than student-aid oriented.

The model suggests that public 2-year colleges need not be included since they normally do not enroll large numbers of students from outside their local jurisdictions, and those few that do have established reciprocal or "charge-back" arrangements with neighboring jurisdictions. I would recommend that you reconsider utilizing "charge back" as a rationale for not including public 2-year colleges. In a survey conducted at my request in March 1974 by the staff of the Maryland State Board for Community Colleges, it was determined that no more than 30 states maintain a "charge back" system.

As outlined here, the tuition "bank" would ascertain the creditor and debtor states, submit bills, issue drafts, etc., "once a year." Would not the operation be more accurate if it were placed on a semester (or quarter) basis?

Why should states like California, New York, Illinois, Florida, New Jersey, Maryland, Hawaii (to mention only a few) agree to participate in a program calling for the appropriation of additional funds which will leave the state? These states have spent large amounts of taxpayers' dollars in operating and capital funds to establish postsecondary educational systems including community colleges, 4-year state colleges, multi-campus universities, and professional schools. Legislators and governors in those states would probably argue that they feel postsecondary educational opportunities have been provided for the citizenry. Is it really necessary to leave one of these states to "get" an education?

I have attempted to test the statement that a great many states show a "substantial annual revenue surplus" that could be turned to increased support for public higher education. Table 1 reports beginning-of-the year (fiscal year 1975) surplus/balance figures for 30 states. These data were obtained from 1973 and 1974 governors' budget messages. They reveal a very uneven picture of available funds, which suggests that "substantial annual surpluses" do not occur regularly and are not found in every state.

Unfortunately, "more progressive tax structures" are not evolving, especially in election years. Even if they did, higher education would still have to compete with the articulate advocates for mental health, special education, education for the gifted, drug abuse and alcoholism control, youth services, transportation, social services, community development, (and the list goes on) for those new tax dollars.

Finally there will be legislators and taxpayers who would take issue with the notion that states have a responsibility for providing access to higher education to residents seeking admission to out-of-state colleges and universities.

Legal Analysis—Professor Vestal

Students from states which participate in the program outlined would have no objection should they attend a school in a state other than their own since they would be treated equally with resident students. The states, if they can be brought into the program, would be acting legally because they would be paying tuition for their own residents which would seem to be a legitimate expenditure of state funds.

TABLE 1

Selected State Comparison: FY 1975 Beginning of Year Surplus/Balance

(In Millions of Dollars)

State	General Fund Balance Forward	Notes
Alabama	$ 2.6	
Alaska	128.6 Deficit	To be made up from unrestricted fund account
Arizona	24.5	Biennium budget estimate
California	27.5	Biennium budget estimate based on modified accrual of revenues of expenditures
Colorado	88.5	Biennium budget. $15.0 million is kept in a revolving fund; remainder is true surplus
Connecticut	70.1	Biennium budget 72-73 estimates of surplus
Delaware	72.9	Triennium budget-estimated balance forward
Florida	225.3	Biennium budget. $9.6 million in general revenue sharing included in balance
Georgia	122.1	
Illinois	162.0	
Iowa	.038 ($38,000)	Biennium, June 30, 1974, estimated Note: Budget is balanced by mandate
Kansas	4.3	
Kentucky	9.2	
Louisiana	19.4	Biennium, June 30, 1974, estimated
Maine	1.5	Biennium
Maryland	29.3	FY 1974 carryover was $57.3 million. Operating budget surplus for end of FY 75 will be $200,000
Massachusetts	25.1	Coming out of FY 76, a $60.8 million deficit is projected for Massachusetts
Mississippi	76.7	
Missouri	15.0 Deficit	

[Continued]

TABLE 1 [*Continued*]

Montana	.9 ($931,000)	Biennium budget estimate
New Jersey	321.8	$2.7 billion total budget
New Mexico	39.3	
North Carolina	324.8	Biennium estimated
North Dakota	1.8	Biennium estimated
Rhode Island	34.1	
South Dakota	22.3	Biennium estimated on a fiscal year basis
Tennessee	.3 ($300,000)	Biennium estimated
Utah	28.5	
Virginia	8.6	Biennium estimated
West Virginia	.082 ($82,000)	June 30, 1974, estimated fiscal year end balance

Table prepared by Michael Carpenter, budget review analyst, Maryland State Department of Fiscal Services.

Note.—The above statistics represent year-end general fund balances and generally do not meet the U.S. Census Bureau's criteria of "surplus," because retirement funds have not been factored into each state's balance.

A similar problem occurs in the definition of "general fund." Most states add into this fund general revenue sharing receipts and federal reimbursals.

In one case there were no general funds per se but an unrestricted fund based upon such revenues as oil field or mineral leases that acted as a revolving account. (See notes for Alaska.)

Of the 30 states sampled, 14 are budgeting on a biennium basis; therefore, surpluses or balances are of an estimated nature. One state, Delaware, is on the triennium system. The remainder of the states, unless otherwise noted, are on a fiscal year basis. All *but* Illinois, Kansas, Kentucky, and West Virginia note that year as being FY 74-75, implying a cycle other than the July to June pattern.

Other noticeable patterns are that the southern states that are not on a biennium budget are usually still in the line-item control stage of budgeting as opposed to program budgeting. The method of budgeting versus the size of the state budget appears to have little bearing on size of surplus samples except in those states that are mandated to balance the budget, i.e., Iowa. However, states on the biennium system carry sizable surplus estimates forward, which may be indicative of either better fiscal planning under this system or underestimation of the appropriation side of the budget coupled with upward revenue estimations at the middle of the biennium.

I have serious doubts as to whether the states would be willing to enter such a program, unless forced into it, because they would lose all control over the drain on their treasuries. The expenditures would be dependent on the desire of students to study outside the state; the more leaving the state, the greater the drain.

I also would raise a question about the effect of this plan on the various institutions. Would the more able individuals tend to move to certain institutions, while some other institutions take only those who remain? Would this tend to lower the caliber of some of the state institutions in certain states?

The basic concept of the national tuition bank scheme would seem to be constitutional in its treatment of students by the various states. The determination of residency would have no direct impact on the students from participating states. For students from nonparticipating states, the problems would be the same as those which exist today in being classified initially and in attempting to be reclassified as a resident student.

There is a very significant problem, from the legal point of view, wrapped up in the provision, "some reclassification mechanism would be necessary since a small number of students may want to establish residency in the state where they attend college." Does this mean that reclassification would affect the operation of the subsidy through the bank? This provision concerning reclassification is subject to the same difficulties which exist now in reclassification, concerning residency, in institutions of higher learning.

There are some soluble problems of organization in this model. The corporate organization of the national tuition bank is one. The bank might be either a federal corporation or one established by an interstate compact. The New York Port Authority is an example of the latter. If the interstate compact is chosen as the technique to be used, then the approval of Congress is required.

The agreements between the states and perhaps with the federal government also pose legal problems which must be solved. I view all of these organizational matters as difficult but not insoluble. It seems to me that the crucial problems in this model are practical and not legal.

Reaction—Robert Carbone

Three of the foregoing commentaries suggest that a national mechanism for stimulating student migration, such as the tuition bank, would work to the disadvantage of lower quality institutions. Indeed that might be the case

since many students would prefer higher quality programs that may be in another state. Other students would seek to attend out-of-state colleges for other, nonacademic, reasons—better climate, proximity to ski slopes, better cultural environment, etc. Of course, it should be recognized that these factors influence student migration now. If implementation of the tuition bank would result in some better "quality control" on institutions and specific programs, this would be, as Professor Kauffman suggests, a powerful argument for improving the low quality programs. At the very least, it might have the happy result of keeping low quality institutions and programs relatively small, or it may encourage such institutions to concentrate more on their areas of greatest strength.

I disagree with Professor Kauffman's point that the national bank would have to monitor costs and programs to insure accountability. Under this plan the subsidy a state pays to an out-of-state college is based on what that institution gets from its own state. The accountability mechanisms that determine how much the institution gets for its resident students will serve to assure other states that the costs are reasonable. Thus, it is somewhat a self-regulating system with each state legislature, because of its natural tendency to be careful with its own funds, serving as the accountability agent for all other state legislatures.

Finally, I add some information to support the suggestion that many states can well afford to augment appropriations to cover the added costs of subsidizing migrating students. The January 1974 issue of *State Government News*, a publication of the Council of State Governments, carried an article titled, "In the Black," which reads, in part:

> Most States experienced surpluses at the end of Fiscal 1973. The improved fiscal condition of most States enabled Legislatures to pass such measures as tax relief, increased state services and additional capital projects.
>
> The largest surplus was California's $850 million. Alaska had the second largest at $642 million, but it was attributable to the 1969 North Slope oil lease sale. Florida had a surplus of about $300 million and North Carolina of about $209 million. Most of the others were less spectacular, being small or moderate general fund balances.
>
> The fiscal condition of most States took an upward turn in fiscal 1972 according to Census Bureau data. In fiscal 1972 aggregate state revenue exceeded state expenditures by $3.1 billion, in contrast with fiscal 1971 when aggregate state expenditures exceeded state revenue by $1.6 billion.

It is undoubtedly true that the situation varies greatly from state to state. Nevertheless, it is apparent that many states do have the resources to

provide subsidies for migrating students and certainly the federal government could fund the entire amount needed by shifting something less than 1 percent of the annual "subsidies" devoted to military matters. At both the state and national levels, the feasibility of such a system is more a matter of priorities than of economics.

A RATIONALE SUPPORTING THE ADMISSION OF NONRESIDENT STUDENTS TO PUBLIC COLLEGES AND UNIVERSITIES

Each year hundreds of thousands of college students migrate across state and national boundaries to pursue programs of higher education in state colleges and universities. This has long been the case and, it is hoped, the practice of enrolling students from other states, regions, and nations will endure. For some readers, the ideas expressed in this statement may appear to be merely a codification of conventional wisdom. For others, however, the elaboration of benefits thought to accrue from extensive student migration may provide a better understanding of the broad goals of public higher education in this nation.

Private and sectarian colleges and universities in America have always attracted students from other regions. Indeed, many give special attention to the geographic origin of applicants, thereby helping to insure a more diverse student body. This tradition is also a reflection of the sources of support of these colleges—private and church-based philanthropy usually unfettered by the arbitrary demarcations of state and national boundaries. Public institutions of higher learning, on the other hand, developed under different circumstances. Each had to look to the assembled representatives of the people of a single state for basic fiscal support. Yet these state-supported colleges and universities also opened their doors to generation after generation of students from other states and nations. (Of course, these nonresidents were asked to pay higher tuition in the form of nonresident fees. In earlier times, nonresident fees were modest but, unfortunately, in recent years the differential between resident and nonresident tuition has become substantial.) It is legitimate to ask why this tradition developed in the public institutions. An attempt to respond to the query can be read as a justification for the admission of nonresident students to all public colleges and universities.

The reasons that most readily arise are simply the historical precedents which determined much of the structure and program of public colleges in America. Universities in Europe, for the most part, received fiscal support from the central or national governments and thus owed no special debt to the people of the subdivision in which they were located. These institutions admitted students from all provinces and other lands as well. Even in Germany and Switzerland, where the states or cantons and not the federal governments provided basic funding, it was a student's academic achievement, and not place of residence, that determined whether or not admission to the university would be granted. This tradition, reinforced by similar policies in early sectarian colleges in the United States, was undoubtedly influential in setting the pattern for public institutions.

There were nationalistic motivations also. It is said that Thomas Jefferson admonished his contemporaries to make the University of Virginia a great "national university" by welcoming students from all parts of the new and struggling country. Higher education was to be another force in welding the states into a nation. That advice was clearly heeded and, as more and more states and territories inaugurated public institutions of higher education, the tradition of admitting nonresidents was firmly established throughout the land. History and the great experiment in democracy can thus be offered as basic points in the rationale.

There are, however, some contemporary and perhaps more prosaic reasons for admitting nonresidents to our state-supported institutions of higher education. They can be categorized as purported benefits to the society, the institution, and the student. While not startling or revolutionary in nature, these notions helped determine the admissions practices of public colleges and universities.

Benefits to society. One of the primary factors that led to the development of public colleges and universities in this country was the need to provide manpower trained in professional and technical fields. Manpower needs tend to be national and not local in nature. The migration of students grew naturally because although each state might have a program of agricultural education, not all states could mount more specialized programs in all aspects of the agricultural sciences. All states developed normal schools for teacher preparation but only a few could afford graduate programs in the pedagogical sciences. Some outstanding public engineering and technical institutions emerged even though all states provided introductory work in the engineering sciences. Thus, collectively, by welcoming students from all regions, the state institutions helped meet national requirements for trained personnel and, of course, the states benefited individually since many students who enter a state for undergraduate or professional training remain there to make a long-term contribution to the state's welfare. The close correlation between advanced education and higher earning power

(and thus higher tax liability) is but one way in which former nonresidents are able to contribute to the state in which they were educated and in which they now reside.

Evidence of the worth of increased student mobility has, in many states, motivated policymakers to initiate programs that encourage such movement. Member states of three regional educational associations (NEBHE, SREB, and WICHE) have supported student exchange programs for many years, and a number of bilateral exchange arrangements (for example, the comprehensive Minnesota-Wisconsin Reciprocity Agreement) are in operation. Of course, other nations also benefit from the practice of welcoming migrating students. Numbered among the nonresidents at public institutions are students from countries around the world, most of whom return to their native lands following graduation.

A less tangible but equally important benefit is the contribution to interstate, interregional, and international understanding that results from the coeducation of geographically and culturally diverse students. This notion, which may appear to be more of an aspiration than a reality, might well be viewed with skepticism, since regionalism and jingoism are still common attitudes even among the beneficiaries of higher education. While convincing evidence of this benefit may be hard to document, it is clear that such coeducation does at least provide opportunities for students from diverse backgrounds to test their assumptions, suspicions, and stereotypes of other people in the great laboratory of a college campus. This makes it more likely that genuine friendship and understanding, between individuals as well as nations, could be based on substantive grounds. As one internationalist put it, friendships are more likely achieved when the bases on which they rest are realistic rather than putative.

Benefits to the institution. It is hardly necessary to assert that a college or university which welcomes students from a variety of backgrounds will be a more interesting and stimulating place than one that enrolls only students with similar characteristics. If parochial attitudes persist in the former institution, at least the students will be exposed to attitudes that represent varied localities. Again, a skeptic might claim that since most college and university students are from middle-class backgrounds, their place of origin is of little consequence. To believe this, however, is to believe that a middle-class student from Montana and another from Manhattan have nothing to offer each other. Only an extreme skeptic would hold fast to so tenuous a premise.

If the academy is a more lively and interesting place, it is likely to attract lively and interesting people, both students and members of the faculty. In turn, such people enrich the intellectual atmosphere and help create a more

stimulating educational environment. All of this greatly adds to the institution's potential for giving its students a liberal education in the best sense of the phrase. Because students can and do learn a great deal from their fellow students, as well as from their professors, the mix of students on any campus is an important educational factor. Since it is a factor well within the control of the faculty, administration, and governing board, it need not be left to mere chance. A well orchestrated diversity of students on any campus is both possible and desirable.

Benefits to the individual student. The assertions in this category are equally simple and straightforward. An educational association with fellow students from diverse backgrounds tends to widen one's horizons. An introduction to the views and cultural variations of other students with different experiential backgrounds will enhance and enlarge the experience of any student whose own background is of necessity relatively limited. As was suggested earlier, one of the direct benefits of a culturally diverse student body is that students learn from fellow students.

There are also economic and vocational benefits to be derived from unimpeded student migration, benefits that flow directly to the student. The freedom to cross political boundaries to attend college provides all students with a greater range of career objectives and educational goals. Under such circumstances it is likely that a student will identify a field more akin to personal motivations, abilities, and limitations. Moreover, students with the freedom to migrate to college are more likely to locate a college or university that offers a program optimally appropriate for each individual. More options should improve congruence of student objectives with the program selected and, in turn, this should increase the likelihood of success both in college and after graduation as well.

Data describing college student migration patterns in this country reveal an uneven flow of students from state to state. States that have historically provided relatively few higher education places in their own public colleges have, of necessity, exported large numbers of students to other states. As might be expected, the public institutions in these exporter states have student bodies that are almost entirely composed of resident students. On the other hand, many states have provided greater opportunities in higher education and as a result have been willing and able to welcome large numbers of nonresident students. Quite naturally, profiles of enrollment in institutions located in importer states reveal more heterogeneous characteristics in the student population. Unfortunately, there are forces at work that tend to limit or even reduce the desirable heterogeneity in many institutions. Sharp increases in nonresident tuition rates and restrictive admission quotas covering nonresident students have been instituted in recent years. This problem was addressed by Professor Amitai Etzioni,

director of the Center for Policy Research at Columbia University, in his article, "Interstate Integration of Students," in *The Educational Forum*. He writes:

> Reducing the ratio of out-of-staters will tend to increase campus homogeneity and thus heighten interstate segregation, a development which is undesirable on several accounts. For the individual student, college attendance should be a period of expanding horizons and experiences. One way this is achieved is by allowing them to study, indeed to live, with persons of different backgrounds. Most [students] go to high schools whose student bodies are drawn largely from one class, ethnic, sometimes religious, and always regional, background. It tends to be the same as their neighborhood. . . . Hence colleges are usually the first real chance, and often the last, for a great societal mixer, a place where persons of all backgrounds coming from different regions will get to know each other as persons and not as stereotypes.

Clearly, Professor Etzioni presents a strong argument in support of liberal admission and tuition policies that will encourage the free flow of students across state and national boundaries. He continues:

> Socially, America has long been an under-integrated society. It is more heterogeneous than most societies because it is larger, more populous, and has a greater variety of subcultures. It also lacks the unifying effects of a dominant institutionalized religion (as in Spain), of a centralized school system with a unified curriculum (as in France), or a universal draft (as in Israel). No wonder intergrouped conflicts are often more intense, and interregional tensions higher, than in these countries. The colleges, in which future leaders of America, various subcommunities, and about half of its citizens are educated, are the places where crisscrossing ties may be evolved and a shared national perspective may be developed. Thus, on both personal and social accounts, interstate flows of students should be encouraged rather than hindered.

Few would argue that the truly educative experiences associated with college attendance are limited to classroom encounters. Thus, educational objectives underlying formal courses and seminars are augmented by more global educational goals that stem from society itself, both national and international. If that is so, then the very act of constituting the mix of students on any campus can be described as an element of the larger curriculum, a resource that can be applied to enrich the student's college experience and make it more truly educative. The calculated and efficient use of this resource is most certainly of direct benefit to the student, of value to the institution, and of service to society.

LEGAL BACKGROUND: NONRESIDENT TUITION AND CONSTITUTIONAL LAW

Recent decisions of the U.S. Supreme Court indicate that the state's authority to distinguish between residents and nonresidents for the purpose of charging tuition is not constitutionally vulnerable. The Court affirmed federal court decisions in cases from Minnesota and the state of Washington in which it had an opportunity to, but did not, find the concept of nonresident tuition unconstitutional. How the Court's action in the nonresident tuition cases comports with its decisions in welfare and voting residency cases (which laid the theoretical groundwork for challenges to nonresident tuition) is a subject of some speculation, since the Court chose to affirm these lower court decisions summarily, without opinions. In a third case the Court issued an opinion invalidating portions of Connecticut's nonresident tuition statute, but this case involved only the criteria used to distinguish between residents and nonresidents.

While the right to charge nonresidents higher tuition survives intact, the method for determining who shall be a resident for tuition purposes has been circumscribed. The result, no doubt, will be to permit more students to qualify as residents for tuition purposes than would have been eligible before the various state formulae were subjected to due process scrutiny.

Any study of the tuition cases must keep three related, but distinct, issues in mind. May the state constitutionally distinguish between students who are residents and students who are not residents, and charge the latter significantly higher tuition? If the state may charge nonresident tuition, to which criteria may the state look when determining which students may be classified as residents? May the state require that a student must reside in the state for a substantial period of time before being allowed to benefit from the lower tuition rates for which residency status would qualify him? In this paper, we discuss these issues and how they have been addressed by recent court decisions.

This review of the legal background relevant to nonresident tuition issues was written by David J. Hanson, assistant chancellor, and Michael A. Liethen, legal assistant to the chancellor, both of the University of Wisconsin—Madison.

Challenges to nonresident tuition multiplied after the U.S. Supreme Court decided the 1969 landmark case of *Shapiro* v. *Thompson* which held unconstitutional statutes in several states and the District of Columbia which imposed a 1-year durational residency requirement as a precondition to eligibility for welfare benefits.[1] The Court found that denying benefits to new state residents, solely because they had not lived in the state for at least 1 year, created a classification which invidiously discriminated against them in violation of the guarantee of equal protection of the law. Holding also that citizens have a right to interstate travel which is not unreasonably burdened or restricted by statute, rules, or regulations, the Court found that welfare residency requirements were an unconstitutional penalty on interstate travel unless the government could show that such requirements were necessary to promote a compelling governmental interest. In *Shapiro* the court had to balance individual rights against the interests asserted by the state. How substantial a showing the state must make is determined by the nature of the individual right affected. If the right whose exercise is penalized by governmental action is "fundamental," then the government must show that its action in question is necessary to promote a "compelling state interest." If governmental action does not affect a fundamental right, the government need only show that its action bears a rational relationship to achievement of a legitimate state purpose. The difference between the two tests is in their stringency. The "compelling state interest" test requires the state to show that the end sought is legitimate, that the proposed action actually achieves that end, and that there are no less drastic alternatives available which do not somehow infringe upon or penalize the exercise of a fundamental right.

In *Shapiro*, the Court found that deterring indigents from migrating to a state in order to gain more generous welfare benefits, and limiting welfare benefits to those who have contributed to the state were not constitutionally permissible state objectives. The state argued that these objectives facilitated planning for the welfare budget and provided an easily administered residency test. However, the Court said this did not satisfy the compelling state interest test since the state had not shown that those objectives could be achieved by a residency requirement or that less drastic means were not available.

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[1] 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

The precise meaning of a durational residency requirement should be clarified. A 1-year durational residency requirement means that the individual must establish that at some point in time all of the requisite criteria for bona fide residency were met by him *and* that he continued to live in the state for 1 year after that point in time *during which* all the requisite criteria for a bona fide residency continued to be met.

Durational residency is not a requirement that an individual be present in the state for a period of time during which he proceeds to meet all the requisite criteria for a bona fide residency.

Significantly, in a footnote to the *Shapiro* decision, the Court said that it implied "no view of the validity of waiting-period *or* residency requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth."[2] In those instances, such requirements "may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel."

The Supreme Court's 1972 decision in *Dunn* v. *Blumstein*,[3] which declared unconstitutional Tennessee's 1-year durational residency requirement as qualification for voting eligibility, gave added momentum to constitutional arguments against nonresident tuition. The durational residency requirement there was held to deny equal protection of the laws by unreasonably discriminating among classes of citizens (based on recent residency in the state) and by penalizing the right of interstate travel.

For the opponents of nonresident tuition the syllogism was set: If durational residency requirements were unconstitutional in penalizing the right to interstate travel, then it followed that they were also unconstitutional in the context of public higher education because nonresident tuition penalized students who exercised their right to interstate travel.

The Court's first significant indication that there may be limits to the interstate travel argument came in a case which challenged the University of Minnesota's 1-year durational residency requirement. In *Starns* v. *Malkerson*,[4] a three-judge federal court rejected the *Shapiro*-based argument that nonresident tuition interferred with the right to interstate travel. Not involved was the right of the university to charge nonresidents higher tuition than that assessed residents. In rejecting the *Shapiro* argument, the three-judge court said:

> While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro* involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus the residency requirement in *Shapiro* could cause great suffering and even loss of life. The durational residency requirements for attendance at publicly financed institutions of higher learning do not involve similar risks.[5]

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[2] Footnote 21 to the majority opinion; 394 U.S. at 638, 89 S.Ct. at 1333, 22 L.Ed.2d at 617.

[3] 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

[4] 326 F. Supp. 234 (D. Minn. 1970), affirmed without opinion, 401 U.S. 985 (1971).

[5] 326 F. Supp. at 238.

Thus, the court appeared to say that nonresident tuition, while related to the fact of recent interstate travel, is not constitutionally impermissible since the benefit involved (higher education) is not as basic as welfare benefits.

Having found that interstate travel was not penalized and that higher education is not a fundamental right, the court applied only the rational relationship test to the state's discrimination against recent residents and found that the 1-year durational residency requirement was a "rational attempt by the State to achieve partial cost equalization between those who have and those who have not recently contributed to the State's economy through employment, tax payments and expenditures therein."[6] Decisions of three-judge federal courts are appealable directly to the Supreme Court. In 1971, the Supreme Court summarily affirmed *Starns* without an opinion.

In addition to *Shapiro* and *Dunn*, another case affected nonresident tuition litigation. In March 1973 the Supreme Court decided *San Antonio Independent School District* v. *Rodriguez*,[7] an appeal from a three-judge Texas federal court decision holding that the Texas school financing system, which relied on local property taxation, unconstitutionally discriminated against members of poor families residing in school districts with a low property tax base. The lower court had applied the compelling state interest test to the financing system after finding that it denied students living in districts with low property valuations a fundamental right to an education.

In reversing the lower court decision, the Supreme Court found that while education was undeniably important, it was not among the fundamental rights guaranteed by the United States Constitution. This holding nullified an important argument advanced by litigants challenging the constitutionality of nonresident tuition schemes. While they still could argue that nonresident tuition affected interstate travel, it was no longer possible to argue that nonresident tuition denied a fundamental right to higher education.

In June 1973, 4 months after *Rodriguez* was decided, a three-judge court in Washington state ruled in a case closely similar to *Starns*. In *Sturgis* v. *State of Washington*,[8] plaintiffs had challenged the state's right to impose a 1-year durational residency requirement as a qualification for resident tuition. The plaintiffs relied upon both *Shapiro* and *Dunn*. The court found that *Starns* was dispositive of the issues raised and noted that the *Rodriguez* holding

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[6] 326 F. Supp. at 240.

[7] 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

[8] The case is unreported; Case No. 614-72C2 (W.D. Wash. June 20, 1973).

(that education was not a fundamental right) further supported the distinction *Starns* had made between litigation involving nonresident tuition and litigation involving welfare matters. The *Sturgis* plaintiffs therefore had incorrectly premised their case on the argument that there is a fundamental right to higher education.

Since a fundamental right was not involved, the state's financing scheme for higher education which included higher tuition for nonresidents was subjected only to the rational relationship test. The *Sturgis* court adopted the *Starns* reasoning that the state had a legitimate interest in requiring new residents to make "some contribution, tangible or intangible, towards the State's welfare for a period of twelve months before becoming entitled to enjoy the same privileges as long-term residents possess to attend the University at a reduced resident's fee."[9]

There is one troublesome gap which appears when the reasoning of *Shapiro* and *Dunn* is carefully compared with *Sturgis* and *Starns*. The results in *Shapiro* and *Dunn* clearly flow from the finding that the 1-year durational residency requirement penalized the exercise of the right to interstate travel. However, that logic somehow does not transfer with equal force to the nonresident tuition cases even though the mere fact of interstate travel results in higher tuition rates. Why this result obtains has not been explained. The two nonresident tuition cases to reach the Court which involved a durational residency requirement are the same cases which the Court summarily affirmed without explanation. An explanation for this apparently contradictory result does exist.

The first major distinction which comes to mind is that in both *Shapiro* and *Dunn* the fact of interstate travel operated to absolutely deny entitlement to welfare benefits or the right to vote. This was true even though, in its decision on *Dunn*, the Court observed:

> *Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other "right to travel" cases in this Court always relied on the presence of actual deterrence.[10]

However, in *Starns* and *Sturgis* no such showing was made. It is probable that none could be. Large numbers of students do engage in interstate travel each year to attend public institutions of higher education in other than their states of residence. Public institutions of higher education enroll substantial numbers of students who are nonresidents. It is impossible to quantify how many, if any, students are actually deterred from interstate

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[9]326 F. Supp. at 241.

[10]405 U.S. at 339-340, 92 S.Ct. at 1002, 31 L.Ed.2d at 283.

travel by the higher tuitions necessitated by the 1-year durational requirement.

Second, one of the purposes for the enactment of the durational residency requirements involved in both *Shapiro* and *Dunn* was to discourage nonresidents from entering the state. The legislative history of those statutes showed that an original objective had been to make impossible, or very difficult, travel from one jurisdiction to another in search of more generous welfare payments. Likewise, in *Dunn* the state argued that a 1-year durational residency requirement was necessary to prevent "colonization" of portions of the state (especially around college campuses) by nonresidents who came into a state for other purposes, such as to obtain an education, and who, by their numbers, dominated local elections and government without regard to the wishes or needs of residents of much longer standing. Exclusion of residents had not been an objective of the statutes at issue both in *Starns* and *Sturgis*. The objective there was cost equalization.[11]

Third, it could be that nonresident tuition does not constitute a "penalty" on interstate travel as that concept is applied by the Supreme Court. The Court suggested that possibility in the *Shapiro* decision. How such a conclusion would be reached is not clear. It might be that, reasoning from the Court's conclusion in *Rodriguez*, since there is no fundamental constitutional right to an education, even if interstate travel impairs access to a higher education, no "penalty," as the Court used that concept, results. By contrast, the right to vote, which is a constitutional right, was denied in *Dunn*, and the right to subsistence, which though not a fundamental constitutional right but certainly more substantial and immediate than a claim to the benefit of a higher education, was denied in *Shapiro*.

In addition to a theory that education is not a fundamental right, there is another sense in which any denial of access to higher education due to recent interstate travel might be seen as not constituting a penalty. Every state maintains some system of higher education, albeit some states have been more generous with financial support or have developed more prestigious institutions. It should be recalled that claims in *Rodriguez* were very similar: Students from wealthier districts which could afford to support more lavish educational systems received a better education than that afforded students from more modest districts who attended more modest schools. In *Rodriguez* the Court stated:

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[11]The cost equalization argument holds, of course, only as long as the nonresident tuition assessment is less than or equal to 100% of the cost of the individual's education. A cost equalization argument in support of a nonresident tuition assessment which was, perhaps, twice the full cost of education would lend considerable support to the conclusion that the intent of the statute, as applied, was actually to exclude nonresidents.

> Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditure in Texas provide an education that falls short.[12]

In other words, no penalty can be shown to be involved in nonresident tuition cases because it cannot be shown that there has been any real denial of educational opportunity where the student had access in his own state to a higher education system which had not been shown to be substandard.

However the Court reached its conclusion and regardless of whether or not the reasoning appears to be consistent with other durational residency cases, it remains that the Supreme Court has summarily affirmed decisions in which the 1-year durational residency requirement as a precondition to eligibility for in-state tuition was directly and clearly an issue.

Aside from *Sturgis* and *Starns*, there is a third Supreme Court case which provoked considerable interest. *Vlandis* v. *Kline*,[13] decided in June 1973, is the Supreme Court's only *written* decision concerning nonresident tuition. The issue concerned the state of Connecticut's scheme for distinguishing between residents and nonresidents. Under Connecticut law, a student was considered to be a nonresident for tuition purposes if, at any time during a 1-year period immediately prior to the application for admission, the student had a legal address outside of Connecticut. A student thus classified a nonresident retained that classification as long as he or she attended the Connecticut institution to which the admission application had been submitted. The effect of this statute was to create an irrebuttable presumption of nonresidency for those students who were not residents of Connecticut at the time they applied for admission, regardless of conduct or actions consistent with Connecticut residency during attendance at school and regardless of how long they might have been Connecticut residents before leaving the state to establish residence elsewhere.

The issue in *Kline* never was a challenge to the constitutionality of the concept of nonresident tuition. (A number of reports which circulated in higher educational circles at the time the *Kline* case was filed did erroneously report that the issue was ultimately whether the state could distinguish between residents and nonresidents and charge higher nonresident tuition.) The Supreme Court's opinion specifically stated that the plaintiffs did not challenge and the district court did not invalidate the state's option to charge higher nonresident tuition to students who were not bona fide residents of Connecticut. The Court said:

> We hold only that a permanent irrebuttable presumption of nonresidence—that means adopted by Connecticut to preserve that legitimate interest—is violative of the Due Process Clause, because it

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[12] 411 U.S. at 36-37, 93 S.Ct. at 1298-1299, 36 L.Ed.2d 45.

[13] 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973).

> provides no opportunity for students who applied from out of State to demonstrate that they have become bona fide Connecticut residents. The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.[14]

The state advanced three reasons in support of the irrebuttable presumption. A brief summary of those reasons, and the Court's reaction to each, is instructive. First, Connecticut argued that the irrebuttable presumption was justified by the state's interest in equalizing the cost of public higher education between residents and nonresidents of Connecticut. The irrebuttable presumption, it was argued, insured that only bona fide residents would receive their full state subsidy. The court held, however, that the conclusive presumption also insured that some bona fide residents of Connecticut, such as those who but for the irrebuttable nature of the presumption were classified as nonresidents for tuition purposes, did not receive their full state subsidy. Second, the state argued that it was reasonable to favor with lower rates those "established" residents who, over past years, had made higher contributions to the state. However, the Court observed that the statutory scheme did not distinguish between established residents and new residents since the presumption of residency was fixed at the time of admission and did not take into account the fact the student may have lived most of his life in Connecticut before establishing a residence elsewhere. It was also noted that the statute did not distinguish between those who were "established" residents of long duration and those who had been Connecticut residents for only several days at the time of application. The third reason justifying the statute was administrative convenience. It obviated the need for costly case-by-case determinations of each student's residency status. The court held, however, that the State's "interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts upon which the State's objective is premised."[15]

The lesson from *Kline* and other due process cases is that the Court will expect that valid objectives advanced by the state in support of its programs be sought by means which are precise and which, in application, actually do achieve the objective asserted.

At the time *Kline* was decided, the Supreme Court had pending before it two other cases from Colorado and North Carolina. Both involved a presumption of a similar sort which prevented a student from satisfying durational residency requirements during periods when the student carries greater than a certain token number of credits or no credits at all. Those

[14] 412 U.S. at 453-454, 93 S.Ct. at 2237, 37 L.Ed.2d at 72.

[15] 412 U.S. at 451, 93 S.Ct. at 2236, 37 L.Ed. at 71.

statutes appeared to have the effect of establishing a nonrebuttable presumption because of the practical impossibility for a student to achieve resident status while in attendance at the institution. The Court's action in those cases is consistent with its decision in *Kline*.[16]

Thus far, this discussion has concerned the case law on the first two issues which were defined at the outset. The remaining issue concerns the standards or criteria to which the institution may look when determining whether a student has established a bona fide residency. We are not totally without guidance in this area, however. The Supreme Court's opinion in *Vlandis* v. *Kline* quoted with approval an official opinion of the Connecticut Attorney General which set forth the standards to be used for determining a student's Connecticut residency status. The opinion, which was issued after the original statute was invalidated by the three-judge court, said:

> In reviewing a claim of in-state status, the issue becomes one of domicile. In general, the domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning. This general statement, however, is difficult of application. Each individual case must be decided on its own particular facts. In reviewing a claim, relevant criteria include year-round residence, voter registration, place of filing tax returns, property ownership, driver's license, car registration, marital status, vacation employment, etc.[17]

In other words, the Connecticut Attorney General was simply advising that the state can and may look to those factors which were consistent with a claim of permanent residency in Connecticut and also to those factors which were not consistent with Connecticut residency. It is important that such a determination must be made on a case-by-case basis using all relevant facts.

Indications of another sort come from *Starns* and *Sturgis*. The approach is somewhat different, stemming from the assumption that the purpose of

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[16] *Glusman* v. *University of North Carolina Trustees*, 190 S.E.2d 213 (N.C. 1972), judgment vacated and case remanded for further consideration in light of *Vlandis* v. *Kline*, 412 U.S. 947, 93 S.Ct. 2999, 37 L.Ed.2d 999 (1973).

University of Colorado Regents v. *Covell*, 501 P.2d 1047 (Colo. 1972), cert. denied, 412 U.S. 952, 93 S.Ct. 3000, 37 L.Ed.2d 1006 (1973).

At issue in *Glusman* was a durational residency requirement which required that the individual reside in North Carolina as a nonstudent for at least 6 months before being eligible for resident tuition. The North Carolina Supreme Court found that the rule was constitutional; the U.S. Supreme Court vacated (invalidated) the decision and asked that the North Carolina court reconsider its decision in light of *Vlandis*. The Colorado Supreme Court found the university's rule unconstitutional as a violation of fourteenth amendment equal protection. In denying *certiorari* the Supreme Court allowed that decision to stand without affirming or reversing it.

[17] 412 U.S. at 454, 93 S.Ct. at 2237, 37 L.Ed. at 72-73.

nonresident tuition is cost equalization between those who have recently been in a position to contribute to the state's economy and tax structure which supports the public university, and those who have not. In both *Starns* and *Sturgis* the reason was found to be a constitutionally adequate justification for nonresident tuition under the rational relationship test. If past contribution to the economy and tax structure of the state is a valid justification, then criteria would be considered which relate only to the question of whether the student has so situated himself so as to fully expose his sources of income *and support* to tax liability in the state in which he now claims residency for tuition purposes. Based on this reasoning, we believe it is possible to develop more highly objective and administratively less burdensome systems for the determination of residency and the assessment of tuition in public colleges and universities.

THE BLACKERBY MODEL: A MULTIPLE CRITERION TUITION ASSESSMENT MODEL

Most public institutions of higher education in America charge a significantly higher tuition rate to nonresident students than they charge to residents. This practice has become ingrained and the revenue from nonresident tuitions has become an integral and fixed source of income for total operating budgets of the institutions.

In the past few years, however, various new laws and court decisions have threatened continuation of these revenue sources because of the simplistic manner in which resident and nonresident status is determined. Institutions of higher education are in danger of losing significant amounts of revenue. One of the obvious responses to this loss of revenue would be to raise tuitions for everyone, possibly denying access to some deserving students.

The major reason for differentiating tuition rates between resident and nonresident students is based on the premise that resident students and/or their parents have paid sufficient taxes to the state to warrant a cost break. The lower tuition rate usually afforded resident students is therefore regarded as a service of the state to its taxpayers. Obviously, since nonresident students have not been paying taxes to the state where they attend college, they must pay higher tuition rates. The means of determining who deserves this cost break is the source of many legal and administrative problems.

This model was created by Dr. Don A. Blackerby, facilities officer and research assistant in fiscal affairs, Oklahoma State Regents for Higher Education. It is based on his unpublished doctoral dissertation, "A Decision Model for the Assessment of Student Fees in Higher Education," University of Oklahoma, 1973.

Characteristics of Resident and Nonresident Students

The purest stereotype of a resident student would be a student born and raised in the state, whose parents have paid and are still paying taxes to the state.

The purest stereotype of a nonresident student would be a student born and raised in another state, who moved into the state expressly for the purpose of going to college.

Most students, however, fall somewhere in between these two extremes, and a simplistic classification system that fails to offer differentiated tuition rates based upon variations of these extremes has the potential of violating either the students' rights or the original premise of the state for establishing nonresident tuition rates significantly higher than resident tuition rates.

Measures of residency that are sometimes used include domicile of student and/or parents, location of high school attended, voter status, location tax return has been filed, length of domicile in state, marital status, legal status (dependent on or independent of parents), and ownership of property in state.

A Multiple Criterion Tuition Assessment Model

This proposal offers a decision-making framework aimed specifically at the resident and nonresident tuition problem. The model presented here is designed to accomplish the following:

1. Allow the incorporation of any number of residency measures
2. Provide a weighting scheme whereby degrees of perceived importance or priority can be assigned any of the measures
3. Provide a mechanism for the assessment of a different tuition rate for each unique combination of residency measures
4. Provide an assessment system whereby the total of all tuitions will always equal the budgeted tuition income
5. Provide an adjustable tuition assessment system that will yield the lowest tuition for students with the most resident measures and the highest tuition for the students with the most nonresident measures

Four steps must be taken prior to actual application of this model by any institution of higher education. First, the desired criteria of residency and

their measures must be established. Second, weights must be assigned each criterion and its measures according to their perceived importance. Third, effective weights must be computed for each separate measure. Finally, "residence scores" must be computed for each unique combination of measures. If the system is to be computerized, an appropriate program must be written to yield these scores.

A simplified illustration of these steps has been provided in the tables at the end of this appendix. Table 1 lists the essential characteristics of the hypothetical institution used in this example. Table 2 lists the residency criteria, indicates the weights assigned each criterion and its measures, and reports the effective weights computed for each measure. Table 3 provides examples of four distinct categories of students, each with a unique combination of residency measures. For purposes of simplification, only four categories of students have been used here to demonstrate how the system will differentiate among students with different combinations of residency measures. If fully implemented, this system would yield a considerably larger number of categories, since a great many different combinations of residency measures are possible.

As noted in Table 2, five criteria of residency have been chosen in the example: legal status of student, length of domicile in state, high school attended, tax status, and voter status. Each criterion was subdivided into measures which were exclusive of each other but which exhausted all possible cases. Weights between zero and one were assigned the criteria according to the perceived level of importance, so that the weights of all the criteria would sum to one. The ratio of any two assigned weights indicates the perceived relative degree of importance between the two criteria. For example, the ratio between the weights of "legal status" and "high school attended" is four, indicating that in this example the legal status of a student is four times as important as the high school attended. Measures under each criterion were then assigned weights in a similar fashion. The effective weight for each measure is the product of the measure weight and the criterion weight.

Since one and only one measure within each criterion applies to each student, residency scores for different combinations of measures can be determined prior to actual application of the model. Table 3 lists four categories of students, each with a unique combination of resident measures. These categories were chosen to demonstrate how the model differentiates among students ranging from those who are clearly resident (as in category A) to those who are clearly nonresident (as in category D). The residency score for each category is the sum of effective weights of the five residency measures.

Application of the Model

An institution can guarantee a particular level of tuition income once it knows the number of students enrolled in each category. This can be accomplished most effectively and equitably by assessing tuition after enrollment has been finalized. Once enrollment has been finalized, tuition levels are determined by a percentage distribution of the expected tuition income over the various categories. The percentage for each category is a function of the residency score, the number of enrolled students, and the instructional cost per student.

As shown in Table 1, the instructional cost per student in this illustration is assumed to be known by level of instruction. (If an institution cannot produce instructional costs by level, an institution-wide cost per student will suffice.) It was also assumed that the enrollment in each level was equal in each of the four categories.

Table 4 displays the calculations and final results of the application of the model in the hypothetical institution. For each instructional level under each category, the product of the number of students, the residency score, and the instructional cost per student is computed. The products are summed for all categories and levels. This total is divided into each of the products (a percentage distribution) and the quotient multiplied by the total amount of subsidies to be granted. (The amount of subsidy [$7,790,000] in the illustration is the total instructional cost [$14,090,000] minus the tuition income [$6,300,000].) This product is then divided by the number of students to determine the subsidy per student. The difference between this subsidy and the corresponding instructional cost per student is the assessed tuition per student.

Summary

As can be noted from Table 4, the tuitions are low for category A students and high for category D students. It should also be noted that of the $6,300,000 in tuitions, category A students provide only $141,645 or 2.3 percent, category B students provide $834,953 or 13.2 percent, category C students provide $2,159,245 or 34.3 percent and category D students provide $3,164,157 or 50.2 percent. These amounts and the tuition levels for any category of students can be varied almost at will by simple adjustments of the weights.

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TABLE 1

Institutional Characteristics

Assume an institution of 10,000 full-time equivalent (FTE) students with the following instructional costs:

Lower Division	5,000 students	$1,200 per FTE student
Upper Division	3,500 students	$1,500 per FTE student
Graduate	1,300 students	$1,800 per FTE student
Professional	200 students	$2,500 per FTE student

This requires an annual instructional cost of $14,090.000.

The total institutional budget exclusive of capital costs is assumed to be:

Income

Tuition	$ 6,300,000
State appropriations	13,300,000
Federal appropriations	140,000
Recovery of overhead on grants	135,000
Gifts and endowments	22,000
Other sources	103,000
Total	$20,000,000

Allocations

Instruction (including libraries and departmental research)	$14,090,000
Administration (including fringe benefits and general expenses)	2,100,000
Physical plant (including general maintenance)	1,800,000
Student services (including financial aid)	1,400,000
Public service and extension programs	500,000
Other	110,000
Total	$20,000,000

TABLE 2
Residency Criteria and Measures

			Assigned Weights	Effective Weights
A.	*Legal status of student*	.40		
	Dependent on in-state parents		.40	.1600
	Dependent on out-of-state parents		.05	.0200
	Independent; parents live in state		.40	.1600
	Independent; parents live out of state		.15	.0600
			1.00	
B.	*Length of student's domicile in state*	.30		
	5 years or more		.50	.1500
	At least 4 years but less than 5 years		.30	.0900
	At least 3 years but less than 4 years		.10	.0300
	At least 2 years but less than 3 years		.06	.0180
	At least 1 year but less than 2 years		.03	.0090
	Less than 1 year		.01	.0030
			1.00	
C.	*High school student attended*	.10		
	Graduate of in-state high school; parents live in state		.40	.0400
	Graduate of in-state high school; parents live out of state		.15	.0150
	Graduate of out-of-state high school; parents live in state		.40	.0400
	Graduate of out-of-state high school; parents live out of state		.05	.0050
			1.00	
D.	*Tax status*	.15		
	Carried as dependent on parents' in-state tax return		.45	.0675
	Files own in-state tax return		.45	.0675
	Carried as dependent on parents' tax return in another state		.05	.0075
	Files own tax return in another state		.05	.0075
			1.00	
E.	*Voter status*	.05		
	Registered voter in state		.75	.0375
	Registered voter in another state		.05	.0025
	Not registered to vote		.20	.0100
			1.00	

TABLE 3

Student Category Descriptions and Residency Scores

Category Descriptions	Effective Weights
Student Category A	
Dependent on in-state parents	.2000
Graduate of in-state high school; parents live in state	.0400
Carried as dependent on parents' in-state tax return	.0675
Registered voter in state	.0375
Lived in state 5 years or more	.1500
Residency Score	4950
Student Category B	
Independent; parents live in state	.1600
Graduate of out-of-state high school; parents live in state	.0400
Files own in-state tax return	.0675
Registered voter in state	.0375
Lived in state 4½ years	.0900
Residency Score	.3950
Student Category C	
Independent; parents live out of state	.0600
Graduate of out-of-state high school; parents live out of state	.0050
Files own in-state tax return	.0675
Registered voter in state	.0375
Lived in state 3 years and 4 months	.0300
Residency Score	.2000
Student Category D	
Dependent on out-of-state parents	.0200
Graduate of out-of-state high school; parents live out of state	.0050
Carried as dependent on parents' tax return in another state	.0075
Not registered to vote	.0100
Lived in state 1 year and 10 months	.0090
Residency Score	.0515

TABLE 4

Example Application of the Model Showing Calculations and Final Results

Student Categories and Levels	FTE Students	Residency Score	Annual Instructional Cost	Product of Columns (1), (2), & (3)	Percentage Distribution of Products	Total Subsidy by Level and Category (5) x $7,790,000	Annual Subsidy Per FTE (6) ÷ (1)	Annual Tuition Per FTE (3) - (7)
	(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
Category A								
Lower	1,250	.4950	$1,200	742,500	18.5	$1,441,150	$1,152.92	$ 47.08
Upper	875	.4950	1,500	649,688	16.2	1,261,980	1,442.26	57.74
Graduate	325	.4950	1,800	289,575	7.2	560,880	1,725.78	74.22
Professional	50	.4950	2,500	61,875	1.5	116,850	2,337.00	163.00
Category B								
Lower	1,250	.3950	1,200	592,500	14.7	1,145,130	916.10	283.90
Upper	875	.3950	1,500	518,438	12.9	1,004,910	1,148.47	351.53
Graduate	325	.3950	1,800	231,075	5.7	444,030	1,366.25	433.75
Professional	50	.3950	2,500	49,375	1.2	93,480	1,869.60	630.40
Category C								
Lower	1,250	.2000	1,200	300,000	7.5	584,250	467.40	732.60
Upper	875	.2000	1,500	262,500	6.5	506,350	578.69	921.31
Graduate	325	.2000	1,800	117,000	2.9	225,910	695.11	1,104.89
Professional	50	.2000	2,500	25,000	.6	46,740	934.80	1,565.20
Category D								
Lower	1,250	.0515	1,200	77,250	1.9	148,010	118.41	1,081.59
Upper	875	.0515	1,500	67,594	1.7	132,430	151.35	1,348.65
Graduate	325	.0515	1,800	30,128	.8	62,320	191.75	1,608.25
Professional	50	.0515	2,500	6,438	.2	15,580	311.60	2,188.40
Selected Totals					100.0	$7,790,000		

THE HANSON-LIETHEN MODEL: SLIDING SCALE COST RECOVERY FORMULA

This paper discusses the objectives and features of a plan for recovery of a student's educational costs based upon length of permanent residency in a state. The formula apportions more of a student's educational costs to the state tax structure the longer that student has lived in the state and contributed to its tax structure and general economy.

Briefly, this sliding scale cost recovery formula requires that a tuition maximum and minimum be established. Depending upon how long the student has resided in the state as a permanent resident, the institution would decrease the student's liability for payment of educational costs. The decrease between the maximum and minimum would be in direct proportion to the number of years—up to 5—that the student had been a permanent in-state resident. A student who had been a resident for 5 years would be liable only for the minimum tuition rate; a student who never claims to be an in-state resident would always pay the maximum rate.

Most nonresident tuition schemes are less than ideally rational in their operation. Many arbitrarily select a 1-year durational residency period and make a not easily altered decision based on circumstances at the time of initial registration. The net contribution to the state in taxes or community participation may not differ greatly between the student who arrives in the state and works for a year before entering school and the student who arrives in the state and immediately enters school. Yet most present schemes would have the first student pay resident tuition for the remainder of his scholastic career while the second student would pay nonresident rates. The cost difference is substantial over a 4-year career. A more rational system would treat the two individuals similarly and apportion the cost reductions due to residency over a greater period of time.

This model was developed by David J. Hanson, assistant chancellor, and Michael A. Liethen, legal assistant to the chancellor, both of the University of Wisconsin-Madison.

At present, states resist permitting a nonresident to establish residency for tuition purpose because the fee revenue which is foregone must be replaced through state tax revenues. The system suggested here would reduce this resistance and bring the system out of apparent conflict with other residency tests (e.g., those for voting).

If the purpose of a nonresident tuition structure is to require those who have not recently contributed to the tax structure and economy of the state to pay the full cost of their education, while allowing those who have recently made such a contribution to obtain an education at a discount, the sliding scale meets the objectives of such a cost recovery program. The sliding scale provides graduated fee differentials between those students who have not recently contributed to the economy and tax structure of the state. While retaining some distinctions based upon recent residency in the state, a person who recently moved into the state and who then considered himself to be an in-state resident would be classified as such if an adequate showing, based upon voting residence and tax liability, can be made.

The sliding scale formula is easy to administer. The proposal does not require extensive subjective investigations into the individual's intentions. (Such investigations and determinations of subjective intent consume considerable amounts of staff time and money.) The new critieria, voting residence and liability for state income taxes as a resident taxpayer, are easily verified. The system would require maintenance of additional records, but once initial computer programming is accomplished, these would not be costly or difficult to maintain.

The following steps would be required to implement a sliding-scale cost recovery formula for nonresident tuition:

1. The governing board should establish tuition maxima equal to 100 percent of the instructional costs for classes of similarly situated students and should also establish tuition minima which are not less than 25 percent of the instructional costs for classes of similarly situated students.

2. The institution should be authorized to vary an individual student's liability for the difference between the tuition minimum and maximum for his class in accordance with the number of periods of 12 consecutive months that the student has resided in the state as either a student or nonstudent during the 10 years prior to registration for any semester or term. The proportion of the differential for which the student is not liable shall vary directly as the number of periods of permanent residence in the state is to five.

3. Tuition payments in excess of the applicable minimum shall be recoverable as credits against the state income tax due in subsequent years during which the student is, for the entire tax year, a nonstudent resident taxpayer. However—

    a. the maximum allowable credit in any year shall not be greater than that portion of the tax liability multiplied by the ratio of the state's budget for higher education divided by the total state operating budget; and

    b. the total of credits received under this provision may not exceed the total of all tuition payments in excess of the applicable minimum.

4. "Permanent residency" should be determined by eligibility to vote in the state and by the filing of a state income tax return as a resident taxpayer for the period during which residency is claimed.

Definition of Terms

Several terms in that proposal should be explained:

Similarly situated students. This language is meant to recognize explicitly the possibility that tuition and fees charges might be graduated according to instructional level (i.e., freshman-sophomore, junior-senior, graduate-professional) and the variation between maximum and minimum would be calculated according to the instructional level pertinent to a particular student.

Resided in. This term would be defined as consecutive 12 months of residency in the state prior to registration for the semester for which the reduced tuition rate is claimed. It is intended that the number of consecutive 12 month periods of residence in the state with parents or guardians who are state residents would be counted for minors, but that as soon as a minor reaches the state's age of majority he would have to establish and/or continue state residency on his own. It is also intended that a student who moves into the state from another state whose age of majority is higher would be treated prospectively as a resident of the state, if he makes a declaration of residency.

Tax credit. This portion of the proposal should be considered optional since it is not necessary to the operation of the sliding scale formula. However, it has been included in an attempt to adjust the equities with respect to a particular situation. The sliding scale will operate to the disadvantage of two classes of persons: those who have resided in the state for fewer than 5

years prior to the time of first enrollment, and those whose 5 years of residence are established during and after attendance at the university.

The last group would be considered residents at the time of enrollment under most present statutes, yet would still be charged tuition and fees in excess of the minimum rate. The second group is constituted by individuals whose contribution to the economy of the state occurs after attendance at the institution. The tax credit mitigates the effects of the sliding scale on these persons.

Positive Attributes

From the institution's viewpoint, the sliding scale has these principle benefits:

Clarification. Tying our present system of tuition determinations to residency brings it into apparent conflict with changing patterns of residency requirements for voting, taxation, etc. Where residency is the criterion, the definition will be under pressure to conform to other residency requirements which are shorter. The suggested system integrating residency and time avoids this conceptual difficulty.

Fewer administrative resources would be needed to administer the sliding scale. As has been discussed above, the sliding scale formula would dispose of the need for the extensive investigation and subsequent subjective evaluation of the resulting information. The use of voting and tax status as two objective criteria should obviate most if not all of the demands on residency examiners' time.

It should be noted that the sliding scale may have the effect of reducing the incentive to apply for an in-state residence determination because the immediate benefits of resident classification would no longer be so great as they once were. However, the formula may operate to create an incentive to seek resident classification because it would be easier to establish and because it could amount to a substantial savings over a period of time.

Flexibility. The sliding scale formula offers a number of variables which can be manipulated in order to adjust the formula's effect on revenues and demand patterns for education. Those variables are the maximum tuition, minimum tuition, the time horizon (the proposal suggests 5 years), the step reductions between maximum and minimum tuition (the proposal suggests a straight line, but the curve could have small decreases at first with successively larger decreases), and the setting of tuition and fees by instructional level.

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Shift in administrative costs. Residency determinations depend upon whether the individual has recognized and fulfilled his obligation to pay income taxes to the state as a resident taxpayer. The documentary verification of this will have to come from the state revenue department and, in the absence of provisions to the contrary, the cost of verification would be borne by that department. Since little other investigation need be done by the institution, a large portion of administrative costs is shifted elsewhere.

Negative Attributes

Setting values for the variables. Care may have to be taken in establishing values for the variables since certain values or combinations of values may significantly alter the relative costs of education between the state and neighboring states, increase the cost to state residents, or decrease total tuition revenues.

Initial volume of paperwork. Adoption of the sliding scale would require that the starting date for in-state residence be established for each student (unless those already attending were continued under the old tuition statute). This initial documentation will be a significant burden; however, from then on, the last date of in-state residence need be established only at the time of entry, or the necessary information can be solicited on the application for admission.

Establishing length of state residence may be regarded as an insulting imposition, especially by those persons who have been residents more than 1 year and who are residents for all other purposes, and by those who are lifelong residents and who have never done anything inconsistent with residency in the state.

Administration of the Proposal

It will be necessary to verify on a regular basis a student's residency and progress in qualifying for lower tuition levels. This could be done on the registration form for each semester. The information sought should be—

1. whether residence in the state is claimed and, if yes,
2. whether a state tax return was filed for the previous calendar year (or if not, whether income taxes were paid to any other state or whether there was income not subject to taxation by the state in question), and
3. whether the person is registered to vote and where.

Administration of the formula would be considerably simplified if the institution's student identification number were the same as the student's

Social Security number, since income tax forms use the Social Security number as the taxpayer identifier. This would make possible a computer data link between the institution and the state's revenue department.[1] A student's claim of state residency, which would by definition include a claim that state income tax returns were filed, could be easily verified and information held by the institution relative to the student's residency status updated (and tuition level varied accordingly).

Information submitted by the student will be impossible to verify immediately at only one registration period. For second semester, the student will be claiming to be a resident state taxpayer when, in fact, the tax return will not legally be due until the following April. In this situation, the student should be qualified for the lower tuition level (if that is appropriate) contingent upon filing a state tax return.

One additional observation about use of computers is that since all relevant information will be stored on computers, it should be possible, with additional programming, for the tuition charge to be calculated in advance and made a part of the registration packet. In most cases, it should be unnecessary to calculate a tuition charge during the registration process.

Discussion

At this point it is useful to evaluate the sliding scale formula in relation to the constitutionality of distinguishing between residents and nonresidents for tuition purposes, the criteria which may be used to determine the bona fides of residency, and the constitutionality of durational residency requirements. (See Appendix 2 for a more complete discussion of these issues.)

Clearly the sliding scale retains a resident/nonresident distinction which is not different from other schemes whose constitutionality has been upheld by the Supreme Court. Thus it is reasonable to assume the continued constitutional viability of this and other schemes which distinguish residents from nonresidents for the purposes of charging the latter higher tuition.

A more troublesome area concerns the criteria used to determine whether a student is a resident or a nonresident. The problem here is twofold: The criteria used must bear some rational relationship to the purpose of the nonresident tuition assessment (namely equalization of costs depending upon whether a person has recently been in a position to contribute to the economy and tax structure which supports the university), and the set of criteria must be easily administered.

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[1]A data link with another agency is a significant step and ought to be undertaken only after protective steps are taken to insure that information in university computers cannot be raided by persons or agencies over whom the university has no control. Safeguards must be provided to insure that only information relevant to the task is ever available to the outside agency.

The sliding scale reduces to two the criteria which are used to determine bona fide residency. Eligibility to vote would include proof of registration to vote in the state, or at least a sworn statement that the student was not registered to vote and did not actually vote in another state during the period for which residency is claimed. Opportunity to contribute to the economy and tax structure of the state involves a concept of maximum exposure to tax liability in the state in which residency is claimed. Residency cannot be based upon actual amount of contribution since that would inappropriately distinguish among citizens depending upon the size of their incomes and the amount of property they own. Rather, the sliding scale would require that the person claiming residency have filed state income tax returns during the period for which residency is claimed. Such a filing would have to be made as a "resident" taxpayer, not as a nonresident who pays taxes on income earned within the state but who still pays taxes as a resident to some other state (which might then give a credit under a reciprocity agreement for taxes paid to the jurisdiction in which residency is claimed for tuition purposes and in which taxes were paid as a nonresident).

The institution determining residency for tuition purposes need then only require that the student produce (1) evidence of voting eligibility in the jurisdiction or a sworn statement that the individual is not registered to vote or has not voted in another state during the period during which residency is claimed and, (2) evidence that state income tax returns have been filed and the tax liability satisfied during the period during which residency is claimed.

The most striking feature of these criteria is that they relate directly and logically to the theory justifying nonresident tuition, cost equalization, and opportunity to contribute to the economy. Filing of tax returns is direct evidence of this contribution ("opportunity to contribute"); voting residency in the state would indicate or confirm an intention to cut off legal ties to other states as well as an intention to participate in the political community which supports the institution.

There should be no legal issue of constitutional magnitude with regard to these criteria. They relate directly and rationally to a legitimate state objective. In addition, they are clear and unambiguous. Payment of income taxes and eligibility to vote were among the criteria suggested by the Connecticut Attorney General in the portion of his opinion which was cited with approval by the Supreme Court in a recent student residency case (*Vlandis* v. *Kline*—see in Appendix 2, p. 107).

The criteria suggested by the Connecticut Attorney General are probably used by many institutions of higher education in the United States. A number of those criteria do not appear to relate directly to the cost equalization and opportunity to contribute theory; rather they constitute

additional supporting indicia of whether the individual has cut all legal ties to other states. Increasing the number of criteria which are considered in residency determinations under the sliding scale to more than two does raise some questions. How many criteria is it necessary to evaluate? Further, does introduction of such additional criteria into residency determinations unnecessarily complicate the administrative burden? Evaluation of the evidence which might be submitted with respect to many of these criteria would require subjective judgments about the inferences which may be drawn from them. For example, property ownership is not necessarily directly related to the underlying justifications. Property ownership cannot be a conclusive criterion for determining residency since it is a concept based on wealth and discriminates against renters. Further, payment of property taxes does not satisfy the opportunity-to-contribute criterion in most jurisdictions since property taxes support local government functions and not the state tax structure which supports higher educational institutions. Possession of a valid in-state driver's license is not conclusive. If it were, application of such a criterion would discriminate against those who cannot for some reason, including physical handicap, drive an automobile. Car registration is not conclusive since it, too, is a wealth-related criterion. Marital status could not be conclusive since the fact that a student is married does not necessarily indicate that the individual is more likely to remain in the state as a permanent resident. On the other hand, no inferences about residency intention can be drawn from the fact that the student is single. Vacation employment in the state could be an indication of intent to reside in the state permanently but, again, not necessarily. Vacation employment outside of the state is not conclusive of nonresidence since, during times of high unemployment, one may have to take a job where it can be gotten. Vacation employment might also be directly related to the individual's educational program, thereby making impossible any inferences that the individual is either a resident or a nonresident. None of these factors is a very reliable or direct indication of contribution to the state's economy.

That many of the criteria presently used do not directly relate to the underlying justification for nonresident tuition does not introduce a fatal constitutional defect. If evaluated subjectively on a case-by-case basis, the criteria do tend to indicate whether an individual has a present intention to reside permanently within the state. The problem is, precisely, the necessity for the subjective, case-by-case evaluation which is required. It is this administrative burden which Connecticut attempted unsuccessfully to avoid.

By contrast, reliance on filing of tax returns and voting eligibility brings the residency determination clearly within the theory which the Supreme Court appeared to approve in its judgment in *Vlandis* v. *Kline*. Further, and most important, these criteria reduce to a minimum the administrative efforts

necessary to determine residency for tuition purposes. They are objective since the student either produces the evidence and is qualified as a resident, or cannot produce the evidence and is not qualified as a resident for tuition purposes.

There is another benefit to a simple two-criteria formula for determining residency. It is more predictable and easier to understand than the schemes generally in use. This is important since a frequent criticism of nonresident tuition schemes is that their complexity and subtlety frequently escape the students who must assemble information and arguments to support their claims to residency under a formula which few understand. The most striking problem has been that the distinction between residency for voting purposes and residency for tuition purposes is one that generally escapes the public at large and impresses many as being illogical. By moving the criteria for residency for tuition purposes into closer correspondence with the criteria for residency for voting purposes, the system at least appears to be more logical and understandable to the students and to the public.

The remaining issue concerns the durational residency requirement. For the sliding scale, this may be the most troublesome of its legal aspects. Perhaps the most useful way of approaching this issue is to determine the constitutional standard against which it will be measured. Both *Starns* and *Sturgis* (see pp. 103-106 in Appendix 2) rejected the theory that nonresident tuition penalized interstate travel and that it was necessary to apply the compelling state interest test. Therefore the less stringent test requiring only that the state's actions be rationally related to realizing a legitimate state interest is applicable. Since cost equalization is a legitimate state interest and the residency criteria are rationally related to obtaining that end, the only issue which remains is whether it is reasonable to apportion the benefits of residency for tuition purposes over a 5-year period rather than condition them on the 1-year waiting period which was implicitly accepted by the Supreme Court in *Starns* and *Sturgis*. We think it is reasonable. Again, we return to the underlying justification for nonresident tuition—cost equalization based on a previous opportunity to contribute. The question then becomes, why should the opportunity to contribute and the benefits thereof be spread over 5 years? The answer is that, over a period of 5 years of "contributions," the individual established sufficient equity in the state's investment in higher education.

Public institutions of higher education have enormous investments in physical plants and teaching, research, and public service programs which have been financed directly with tax dollars over many years or through bonding commitments extending over periods up to 40 years. The physical plant and the programs of the institution constitute a substantial long-term commitment or investment on the part of each of the state's citizens. The equity in this investment which is established after 1 year's residency and "opportunity to contribute" would most certainly not be adequate in

comparison with that of the average resident. Seen in this light, a 1-year durational residency period is no less logical than a 2-year period or even a 5-year period with the benefits apportioned over those years. Second, we note that when the average mobility of the U.S. population is taken into account, it is not unreasonable to take a 5-year durational residency period as representing at least the average minimum commitment that an individual makes when moving into a different state to take up residence.

In *Shapiro* (see p. 102) the Supreme Court expressed misgivings about the state's argument that the durational residency requirement was "an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes." The Court made several points. First, it is illogical to require persons to live in a state and contribute to its economy and tax structure for a period of time before being eligible to receive welfare benefits, since persons who are eligible for welfare and who do not receive welfare payments cannot be in any position to contribute to the economy and tax structure where they have no income. Second, the Court noted that the statute as it had been written and applied had the effect of disqualifying persons who had entered the state as nonresidents but who had lengthy prior histories of residence in the state. Third, the Court noted that this reasoning would logically permit the state to "bar new residents from schools, parks, and libraries or deprive them of police and fire protection."

The defects the Court found in the statutes at issue in *Shapiro* do not appear to arise in the sliding scale scheme. It is important to note again that the Court at least implicitly endorsed the past contributions theory when it summarily affirmed both *Starns* and *Sturgis*, both of which were decided after *Shapiro*. Additionally, with regard to the Court's concerns, it should be noted that the sliding scale is framed in terms of opportunity to contribute rather than actual contribution. Further, the benefit involved in the sliding scale is education (not welfare), which the court has found to be not so fundamental a right. Finally, the class of persons to whom the sliding scale applies is not by definition, as in *Shapiro*, constituted by persons who are logically unable to contribute to the economy of the state. Second, the sliding scale statute would not operate to the disadvantage of persons who are presently nonresidents but who had, nevertheless, substantial past histories of residency in the state. The statutory language proposed above credits past residency during the previous 10 years. Third, the Supreme Court's disapproval was directed to any scheme which would "bar" from participating in certain benefits residents who had not made past contributions. That would not be the case with the sliding scale since absence of past contributions would not operate as an absolute bar to obtaining an education. It does, though, have the effect of increasing the cost, a permissible and constitutional result. (See the discussion in Appendix 2 which attempts to reconcile the differences between *Shapiro* and *Dunn* on the one hand and *Sturgis* and *Starns* on the other.)

Appendix 5

RESIDENCY AND UNIVERSITY ADMISSION PROBLEMS IN THE FEDERAL REPUBLIC OF GERMANY

One factor that differentiates public higher education in the United States from higher education in other countries is the use of residency as a criterion in determining tuition levels. In this country, migrating students pay substantially higher out-of-state fees. In other countries—even those where universities are supported by "state" rather than "federal" appropriations—all students pay the same fees if, indeed, they pay any fees at all. Place of residence is generally ignored in making decisions regarding admissions and tuition.

This is the case in the Federal Republic of Germany, a nation of 11 states, each of which bears the responsibility for supporting its own universities and other "tertiary level" institutions. There is virtually no private sector of higher education in West Germany, so historically higher education has been open to all qualified students (that is, those who completed the *Gymnasium*) and at extremely low or no direct cost to the student (indeed, university students receive a living allowance from public funds).

A residency matter, however, was at the center of an interesting and important educational development in West Germany—the establishment of a nationwide computerized university admissions system that may soon administer the placement of all students in West Germany's 44 universities. The pages that follow describe this admissions system which, by American standards, can certainly be characterized as revolutionary. These comments are based on personal conversations held during an extended study-tour of West Germany in the spring of 1974. The major purpose of the study-tour was to determine if the German attempt to employ a national admissions scheme could provide any clues that might lead to development of alternative tuition systems applicable to the United States.

Unfortunately, there appears to be no direct application of the German experience to the central goal of this study of alternative tuition systems. It

is possible, however, that readers of this report may find the West German situation of some relevance to the National Tuition Bank Model described earlier in this report. Inclusion of the discussion of the situation in West Germany as an appendix to this report serves mainly to provide some contrast between the American penchant for stressing student residency, and the policies of another country where residency questions play little or no part in the financing of public higher education.

West German Universities—The Problem of Too Many Students

Universities in the Federal Republic of Germany have a problem that many financially-strapped American colleges would welcome—more students than they can handle. Attempts by German political and higher education officials to solve their enrollment crunch differ sharply from what happened in the U.S. under similar circumstances in the 50s and 60s.

American colleges and universities built new classrooms and expanded their faculties to handle the wave of students. The German *Laender* (states)—virtually all higher education there is funded by the 11 state governments—continue to increase university facilities, but their basic response has been to limit enrollment. They call it *Numerus Clausus* (literally, closed numbers) and it has resulted from a dramatic mixture of legal, social, political, and philosophical issues. At first blush, *Numerus Clausus* appears to be a rather simple, commonsense approach to the problem. Under the surface, however, lurks a cluster of related matters that go to the very heart of Germany's traditional concept of the university and the meaning of a university education. One German described the admissions problem as the result of conflict between 19th century notions of university education for relatively few from the upper classes and modern concepts of educational opportunities for people from all social and economic levels.

Traditionally the route to university admission lead through the *Gymnasium*, the "college-prep" secondary school which enrolled few middle- and lower-class youngsters. The certificate of completion issued by the *Gymnasium*, known as the *Abitur*, meant the student was qualified for admission to any German university. So strong was this tradition that Germany's postwar constitution guaranteed holders of the *Abitur* university admission in their chosen field of study as a basic constitutional right. This is a point of great significance since, in Germany, entry to the high prestige, high paying professions is open only to university graduates.

As long as a relatively small percentage of each age group passed through the preuniversity secondary schools the system worked well. But changes in postwar attitudes about education resulted in a democratization of selection and tracking in the lower schools. Teachers in the *Grundschule*, a common elementary school for all German children, began recommending

larger numbers of middle- and lower-class youngsters for admission to the *Gymnasium*. Parents of these children, in the main tradesmen and workers in lower level occupations and vocations, had been excluded from the university (and thus from a higher professional field) by traditional school selection practices. Reluctantly at first and then in great numbers, they agreed to placement of their children in the university track.

Enrollments in the *Gymnasium* increased dramatically and, since all these students were guaranteed university admission, the university enrollment crunch was inevitable. Not only was the cohort of potential students larger, but a greater proportion of *Abitur* holders chose actually to enroll in a university. To complicate matters still more, three alternative methods of qualifying for university admission emerged. Young people or adults who had graduated from occupationally or vocationally oriented secondary schools found they could work by day and attend an *Abendgymnasium* (evening school) at night and thereby earn the *Abitur*. Others entered vocational colleges, known as *Fachhochschule*, and later took examinations that permitted transfer to a university, much as many American students transfer from junior college to university studies. Finally, special exams leading to university admission were provided for people who had entered the world of work without benefit of a secondary education. As a result of all these factors, the number of people qualifying for university admission in Germany has increased 300 percent since 1960.

University officials, sensing the need to preserve academic prerogatives and autonomy, initiated efforts to head off the problem. Under supervision of the national conference of university rectors, an office was established to provide universities technical assistance in making admissions decisions. In 1972, universities in Hamburg (a city-state) and the state of Bavaria began restricting admissions, giving preference to students who were residents while excluding many nonresidents. (The introduction of residency criteria was particularly revolutionary since historically, place of residence had no bearing on admission to a German university.) Immediately a case was brought before the federal constitutional court. The court cited the constitutional guarantee of admission and declared the existing restrictions unconstitutional. However, it went much farther.

Exhibiting what most Americans would regard as an assumption of legislative powers, the court said that the only basis on which a qualified student could be excluded from any university was lack of facilities. It directed that a national office for assignment of study places be established to handle admission of students in all fields in which applicants outnumber the available study places. The ruling came at a time when the federal government was unable to act since Chancellor Willy Brandt had just lost a vote of confidence in the Bundestag. However, the court had provided for

this possibility by suggesting that the 11 states should act, "perhaps through inter-state agreements," if the federal government could not. This wiped out the organization created by the university rectors and placed the problem squarely in the hands of the ministers of education.

Responding promptly to the court's decree, the state education ministers devised an agreement which was subsequently ratified by the parliaments of all states and signed by the 11 minister-presidents (prime ministers). By the summer of 1973, the *Zentralstelle fuer die Vergabe von Studienplaetze (ZVS)* was controlling admissions to nearly a dozen of the most crowded fields in all the nation's universities.

Under terms of the treaty, governance of *ZVS* was given to an executive committee composed of representatives of the education ministers. This group, whose rulings have the force of law, decides which fields will be included in *Numerus Clausus*, how the number of student places in each university will be determined, and what factors will be used in making admissions decisions. The academic community, speaking through an advisory committee, has no power of decision in these matters and can only make recommendations for consideration by the executive committee. Indications are, however, that this advisory voice has been heeded and the two groups are effectively working together. Yet there is some tension between universities and state education ministries. The major point of contention is how to calculate faculty work load, the first step in determining *Lehrkapazitat*—the number of students to be admitted in a restricted field in each university. This is an issue that arouses strong feelings in American public universities and state legislative councils as well.

Numerus Clausus is now an established fact of life in German higher education. The *ZVS* has a staff of several hundred persons who handle nearly 60,000 applications per semester, and from all indications the workload will increase. An official of the organization predicts that by 1978 all fields of study in German universities will be under restriction. This will be true until 1985, he thinks, and after that the balance between students and study places will begin to improve. By 1990 or 1995, according to his predictions, there will be little need for admissions restrictions in most fields. Presently *ZVS* controls admissions throughout the entire nation in the fields of architecture, biochemistry, biology, chemistry, nutritional chemistry, medicine, pharmacy, psychology, veterinary medicine, dentistry, and a combined major in chemistry and biology. In addition, individual states have found it necessary to limit enrollments in other fields on a statewide or local campus basis.

The process is relatively simple. Students seeking admission direct their applications to *ZVS*, not to the universities, indicating in priority order campuses at which they wish to study and the fields they wish to enter. The staff verifies the student's academic qualifications and feeds the data into a computer. In turn the computer assigns the student to a campus (which might be any place in the entire country) and a field, giving predetermined weight to each student's personal circumstances (e.g., proximity to the campus, presence of a physical handicap, quality of examination scores from the *Gymnasium*, etc.). A student who is not assigned to the field of first choice has two options—enter a field that is not restricted or wait until the next semester and apply again. In most cases, such students enter an alternative field—one, it is hoped, closely related to the original choice—and wait for reconsideration in future semesters. Of all the places available in any restricted field, 15 percent are assigned on the basis of social hardship conditions, 8 percent are reserved for foreign students, 46 percent are assigned to students with the highest academic qualifications, and 31 percent are granted to students on the basis of the length of time they have waited to be admitted to that field.

As might be expected, there were problems from the very inception of the national admissions procedure. Officials at *ZVS* noted that students from certain states consistently earned higher scores (*Abiturnoten*, or "notes," as they are called) on the final examinations taken upon completion of work in the *Gymnasium*. This clearly gave those students an advantage in placement and threatened to undermine the whole concept of a national system. To counter this situation, *ZVS* devised a technique for discounting the quality of scores reported by students in a given state if the average of all scores in that state was greater than the national average. Conversely, students from states where the average was below the national average had their scores proportionately increased. This enhanced the aura of objectivity surrounding the operation of *ZVS* and helped reduce adverse reaction from academic sources and the general public.

General acceptance of *Numerus Clausus* in Germany evokes some surprise among American academic types. It is difficult to conceive, for example, that university people in this country would willingly accept a system which removed from the campus all decision making with regard to the composition of next fall's freshman class. And surely any thought of allowing a computer to select the new crop of graduate students would be met with cries of anguish from the departments of every American university and college. Of course, the situation in Germany is not entirely comparable since, by tradition, it is assumed that all *Gymnasia* in the country are of the same quality and thus all graduates are fully qualified to handle university studies. Still, some German academicians voice fears that the *ZVS* operation will have a leveling effect on the quality of German universities. No longer, they say, will the great old-line universities attract

by natural selection the very best young scholars, since the impartial computer will assign incoming students to campuses where they might not have applied under the former system.

Growing public disenchantment with higher education, prompted by the excesses of student radicals on many campuses, also appears to have contributed to the general acceptance of *Numerus Clausus*. Like many of their counterparts in the United States, taxpayers in Germany see university campuses as hotbeds of radical activity, and they are beginning to question the value of unrestricted campus growth. Most students, particularly those who have been waiting several years to gain entrance to their chosen field of study, are unhappy with the new admissions scheme. Yet, there appears to be no organized student resistance to the measures.

No doubt the fact that almost every German student seeking admission is ultimately assigned a study place, even if it isn't in the field of first choice, has tempered student reaction. These alternative placements—called "studies of escape" by some Germans—clearly demonstrate that *Numerus Clausus* is an exceedingly costly attempt to control university enrollments. At most, the national admissions system has succeeded in shifting students, at least temporarily, to less attractive campuses or to less popular fields of study. The end result is expensive in both dollars and wasted human resources. Students are filling places and university budgets must provide professors and instructional facilities for them. Students continue to receive their monthly living allowances from public funds even though they are currently studying art history, say, instead of dentistry or biochemistry or some other field in which they might eventually make a contribution to the nation's economy and welfare. And, of course, this means that they will probably spend 3 or 4 additional years at the university, for most graduates of the *Gymnasium* insist upon claiming their constitutional right to a university education and resist entering less prestigious forms of vocational training. Worse yet, many of these students are at best reluctant learners, merely marking time until they can be admitted to the field that will elicit their serious attention. Lack of motivation and the frustration of waiting 3 or 4 or 5 years to be accepted in medical school, for example, has created heavy psychological burdens for both students and their professors. Under such conditions, it is surprising that radical student groups have not been more successful in exploiting what appears to be a ready-made issue.

German authorities readily admit that providing "studies of escape" for university students constitutes a large fiscal item. A new university law, currently being debated by the federal legislature, would remove waiting time as a factor in determining future assignment of study places. This should discourage many students from entering alternative fields of study but it will also contribute to student discontent. Increasing numbers of students who have completed the rigorous 9-year program of preuniversity

studies in the *Gymnasium* will be frustrated in attempts to study in their chosen professional fields. Since the curricula they followed in secondary school provided no vocational or occupational courses, they will be unprepared for gainful employment and unable to continue their education at the university level. Certainly this will create a politically and economically explosive situation.

Government officials concerned with future manpower needs and fiscal affairs in the nation have recently added yet another complication. It is becoming increasingly clear that there will be fewer and fewer jobs for the increasing number of students completing university programs. This may become another reason for restricting university admission. The supply and demand situation with regard to teachers for German elementary and secondary schools dramatically illustrates the point.

Figures released by the conference of state finance ministers reportedly show that by 1985 German universities and pedagogical colleges will be producing more teachers than can be employed. This estimate is based on current and projected birthrate figures that show a sharp decline in lower school enrollments. The finance ministers called for application of *Numerus Clausus* to the teacher training fields.

The reaction from educators seemed to take three forms. An official of the conference of state education ministers saw the projected surplus of trained personnel as a blessing, citing large student-teacher ratios and the lack of special teachers and guidance counselors as major concerns in elementary and secondary education. While admitting the need for more specialized personnel in the schools, a staff member in the federal education ministry asked why Germany should expend its resources to train large numbers of teachers when state governments will be unable or unwilling to provide salaries for any more teachers than current budgets allow. He pointed out that students completing teacher preparation programs would be virtually unemployable since they learned no vocational skills in the *Gymnasium*, since university studies are narrowly specialized, and since the rigid professional structure in Germany makes entry into an alternative professional field (even higher level civil service positions) almost impossible. These same factors can be applied to discussions of employment problems in all other fields as well.

However, the most fundamental criticism of the finance minister's proposal comes from university officials who say that the use of *Numerus Clausus* to adjust the supply of future professional workers—*Planerisher Numerus Clausus* is the German term for it—is clearly unconstitutional. They point out the guarantee of admission to a specific field and cite the constitutional court's decision which merely delayed, but did not forever prevent, the admission of students to certain fields. Using enrollment restrictions as a

planning device, university people argue, would go beyond the constitutional court's initial decision and would place the future of all academic fields offered by German universities in the hands of bureaucrats in organizations like *ZVS* and the education ministries. This point notwithstanding, it is likely that German political leaders and the general public would agree with the finance ministers and manpower planners. Behind all of this appears to be a reordering of educational values and a change in the way the average German views higher education.

Historically, Germans have placed high value on the advanced forms of educational activity. Attendance at the *Gymnasium* and the university conferred upon these highly selected students a prestige they would carry throughout life, clearly separating them from those who prepared for vocations or even middle level occupations. Students who completed their studies in the *Gymnasium* were guaranteed entry to the professions. They were the future leaders of both public and private life. They possessed *Bildung*—genuine learning—not merely education or training. Upon completion of their studies (indeed, often even if they did not attain a degree) they took places among the *Bildungs-Elite* at the center of German's cultural, intellectual, academic, and professional life. Society accepted their destiny and, since a relatively small segment of the population was involved, provided ample educational resources for its realization.

The postwar democratization of education in Germany appears to have influenced this historic point of view, however. Large numbers of students drawn from a wider social and economic spectrum moved through the *Gymnasium* and into the universities. Dozens of fields were designated by law as "university level" studies and the result seemed to be a dilution of the traditional concept of "university level" rather than an immediate elevation in prestige for the newly anointed fields. The almost "boomtown" character of the German economy enhanced the importance and appeal of occupations in business, industry, and construction, creating in the German mind a heightened appreciation of these areas of human endeavor. Now vocational training and occupational education of various kinds are being touted as a more desirable direction for young people and fiscal resources to support these kinds of institutions are increasing.

This changing climate of public opinion, coupled with a backlash against excesses of radical student groups, has contributed to the general acceptance of *Numerus Clausus*. Indeed, such feelings may lead to the revolutionary step of basing university admissions on future manpower needs since many Germans, in spite of strong objections from professors and students, now seem to view university studies more as "education" (that is, training for work) and less as "the acquisition of *Bildung*" (genuine learning and elite status). So fundamental a change in thinking about

university studies is a matter of great historical significance. This contention is, of course, a debatable point but the impression grew and was reinforced during a recent series of conversations with German educators, civil servants, students, and average citizens. It could mean that egalitarian concepts in education have overcome the traditional ideas of Humboldt, called "the Saint of German higher education," which have undergirded the intellectual life of that nation for nearly 200 years. Certainly this is a phenomenon that bears watching as Germany strives to deal with the problem of too many students.

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